Libertarianism Debated

# Critical Review

*An* Interdisciplinary Journal *of* Politics *and* Society


| | |
|---|---|
| Cohen's Critique of Libertarianism | Richard Epstein, Am Fealisanach Tom G. Palmer, Justin Weinberg |
| Randian Dialectics | Chris Matthew Sciabarra David MacGregor |
| Hayek on Social Justice | Edward Feser |
| Hermeneutical Libertarianism | Kevin Quinn & Tina R. Green |
| Government and Unemployment | Lowell Gallaway & Richard Vedde J. Bradford De Long |
| The Libertarian Straddle | Tom G. Palmer, Jeffrey Friedman |


Vol. 12 No. 3 $7.25 | Canada $10.50

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## SUBMISSIONS

CRITICAL REVIEW is an interdisciplinary quarterly devoted to understanding the nature, politics, and history of modern states and societies, especially to help evaluate their effects on human well-being. Articles are confined to theoretical and historical issues, eschewing policy advocacy or criticism of proposed policies.

**Format.** Submit contributions not under consideration elsewhere *in quadruplicate*, typed in *double spacing throughout* (including notes, references, and abstract), on 8 1/2 × 11" or A4 paper with wide margins. After final acceptance of an article, authors will be asked to submit both a hard copy and, if possible, a computer disk. All submissions except replies to previous articles, including review essays and solicited papers, may be subject to anonymous peer review; therefore, no identification of the author should occur in text or notes. Number the top of each page. Submissions should be titled and should include descriptive section headings rather than numbered section divisions. A less than 100-word-long double-spaced *abstract*, summarizing the argument of the paper in detail, should begin each submission (including review essays). A separate page should contain a brief *biographical note* for publication, including (in the following order) the author's mailing address, phone and fax numbers, position and institutional affiliation (if the latter is not included in mailing address), titles, publishers, and years of publication of recent books by the author, and acknowledgements (if any). In addition, please (1) use underlining, not italics or bold face, for emphasis; (2) strive for gender-neutral language; (3) use ragged right margins rather than right-justifying; and (4) supply a word count.

In the text of review essays, the first reference to a book being reviewed should include the publisher, city, and year of publication in parentheses; subsequent page references should include page numbers only, rather than reiterating the book's author, unless more than one book is under review.

**Length.** 5000 words (@ 20 TS pp.) is usually the minimum required to explore a topic in appropriate depth. We can accommodate much longer manuscripts, but *cet. par.*, shorter is better.

**Citation system.** Beginning with volume 9, CRITICAL REVIEW has adopted, with some modifications, the style set forth in the *American Political Science Association Style Manual for Political Science*. Both the *Manual* and a list of our modifications are available from our Business Office on request. APSA style replaces end note citations with in-text, parenthetical citations (the "author-date" citation system described in the *Chicago Manual of Style*). Explanatory notes, however, should be in the form of end notes.

**Unsolicited manuscripts should be sent to:** Editorial Office, CRITICAL REVIEW, P.O. Box 380015, Cambridge, MA 02238, USA. **For more information click on *Critical Review* at www.sevenbridgespress.com**

## SUBSCRIPTIONS

Payment for subscriptions should be made by Visa or MasterCard (include account number and expiration date) or check or money order in U.S. dollars drawn on a U.S. bank.

**Subscriptions, back issue orders, advertisements, and customer service inquiries should be sent to:** Business Office, CRITICAL REVIEW, P.O. Box 10, Dept. 136, Newtown, CT 06470. Phone (203) 270-8103, fax (203) 270-8105, e-mail info@criticalreview.com.

*INDIVIDUAL SUBSCRIPTIONS:*

$15 per year for students (any country) with copy of current ID
$29 one year (4 issues), $54 two years (8 issues) within the United States
$35 one year, $66 two years outside the United States via surface mail
$50 one year, $96 two years outside the United States via air mail

*INSTITUTIONAL/LIBRARY SUBSCRIPTIONS:*

$54 per year within the United States
$62 per year outside the United States via surface mail
$77 per year outside the United States via air mail

CRITICAL REVIEW, An Interdisciplinary Journal of Politics and Society, ISSN 0891–3811, CODEN CTRVE3, is published quarterly by the Critical Review Foundation. Indexed and abstracted in *Book Review Index, CIAO (Columbia International Affairs Online), Current Contents/Social & Behavioral Sciences, Economic Literature Index* on DIALOG, *EconLit* on CD-ROM, *Index to Book Reviews in the Humanities, International Bibliography of Book Reviews, International Bibliography of Periodical Literature, International Bibliography of the Social Sciences, International Political Science Abstracts, The Left Index, Periodica Islamica, The Philosopher's Index, Political Science Abstracts, Public Affairs Information Service (PAIS), Research Alert, Sage Human Resources Abstracts, Sage Public Administration Abstracts, Social Sciences Citation Index (SSCI), Sociological Abstracts,* UNESCO DARE Databank of Social Sciences Periodicals on UNESCO CD-ROM and ECHO, and *United States Political Science Documents*. Printed on acid-free paper. Available on microform from UMI, (800) 521-0600, or in reprint form from UMI, (800) 248-0360. Member, Council of Editors of Learned Journals. **Printed in USA.**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Vol. 12 No. 3 Summer 1998

# Contents

**Essays**

207 Hermeneutics and Libertarianism: An Odd Couple — KEVIN QUINN, TINA R. GREEN

225 G. A. Cohen on Self-Ownership, Property, and Equality — TOM G. PALMER

**Exchanges**

253 Government and Unemployment: Reply to De Long — LOWELL GALLAWAY, RICHARD VEDDER

265 Unemployment in America: Rejoinder to Gallaway and Vedder — J. BRADFORD DE LONG

269 Hayek, Social Justice, and the Market: Reply to Johnston — EDWARD FESER

283 Are We All Dialecticians Now? Reply to MacGregor and Friedman — CHRIS MATTHEW SCIABARRA

301 Rejoinder to Sciabarra — DAVID MACGREGOR

305 The Right Set of Simple Rules: A Short Reply to Schauer and Comment on Cohen — RICHARD A. EPSTEIN

319 Locke and Libertarian Property Rights: Reply to Weinberg — AM FEALLSANACH

325 Self- and World-Ownership: Rejoinder to Epstein, Palmer, and Feallsanach — JUSTIN WEINBERG

337 What's *Not* Wrong with Libertarianism: Reply to Friedman — TOM G. PALMER

359 The Libertarian Straddle: Rejoinder to Palmer and Sciabarra — JEFFREY FRIEDMAN

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Critical Review

EDITOR
Jeffrey Friedman,
*Harvard University*

RESEARCH ASSISTANT
Adam McCabe,
*New School for Social Research*

PUBLISHER
Critical Review Foundation
Richard Cornuelle, *President*

BUSINESS MANAGER
Dawn Herron

WEBMASTER
Brian J. Taylor
*brian@brianjtaylor.com*

BOARD OF ADVISORS
Dennis Auerbach, *Georgetown University*
Shlomo Avineri, *Hebrew University of Jerusalem*
Ronald Beiner, *University of Toronto*
David T. Beito, *University of Alabama*
Peter J. Boettke, *George Mason University*
James M. Buchanan, *George Mason University*
Ronald Coase, *University of Chicago*
Tyler Cowen, *George Mason University*
Stephen Cox, *University of California, San Diego*
Gus diZerega, *University of California, Berkeley*
John Dunn, *University of Cambridge*
Richard Epstein, *University of Chicago*
Roger W. Garrison, *Auburn University*
John Gray, *London School of Economics*
Liah Greenfeld, *Boston University*
Robert Hefner, *Boston University*
Albert O. Hirschman, *Institute for Advanced Study*
Steven Horwitz, *St. Lawrence University*
Israel M. Kirzner, *New York University*
Leszek Kolakowski, *University of Oxford*
Robert E. Lane, *Yale University*
Don Lavoie, *George Mason University*
Seymour Martin Lipset, *George Mason University*
Steven Lukes, *University of Siena*
Stephen Macedo, *Syracuse University*
A. R. Maryanski, *University of California, Riverside*
Deirdre N. McCloskey, *University of Iowa*
Sheilagh C. Ogilvie, *University of Cambridge*
J.O. de Meira Penna, *University of Brasilia*
David L. Prychitko, *Northern Michigan University*
Earl C. Ravenal, *Georgetown University*
Mario J. Rizzo, *New York University*
Paul Rosenberg, *University of Cambridge*
Chris Sciabarra, *New York University*
Amartya Sen, *University of Cambridge*
David Ramsay Steele, *University of Hull*
Thomas Szasz, *State University of New York*
Andrzej Walicki, *University of Notre Dame*
Lawrence H. White, *University of Georgia*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Kevin Quinn and Tina R. Green*

# HERMENEUTICS AND LIBERTARIANISM: AN ODD COUPLE

ABSTRACT: *Recent writers in the libertarian tradition have suggested a natural affinity between hermeneutics and libertarian politics. This case is not persuasive. We look at two different ways the link has been attempted. In one, markets themselves are seen as constituting a hermeneutic conversation of sorts. A second approach uses hermeneutics to underpin the traditional liberal confinement of the state to setting the rules of the game—to matters of the right as opposed to the good. But the conception of the self that emerges from hermeneutic thought leads to a communitarian rather than a liberal politics.*

Hermeneutics is part of a reaction against what have been called "Cartesian" epistemologies: theories of knowledge that seek to rest it on foundations that are *certain*. Such foundations may lie in the "clear and distinct ideas" that Descartes and his rationalist successors sought, or in the "sense data" and, later, "observation statements" that formed the given and not-in-need-of-interpretation foundations of knowledge for various empiricisms.

Antifoundationalism, broadly, includes hermeneutics, especially the philosophical hermeneutics of Gadamer, but also pragmatism, postmodernism, and rhetoric, as well as the critical theory of Habermas. Although there are deep differences among these variants, what

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Kevin Quinn is Associate Professor, Department of Economics, Bowling Green State University, Bowling Green, OH 43403, telephone (419) 372-8652, telefax (419) 372-2875, e-mail kquinn@bgnet.bgsu.edu. Tina R. Green, e-mail tinag@bgnet.bgsu.edu, is a student there.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

unites them is opposition to the Cartesian picture of the knower isolated in her own mind. This subject tries to determine whether her mental ideas correspond to facts in the independent world and adheres, in the interest of such correspondence, to a unique Method.

Hermeneutics argues instead that we are subjective interpreters interconnected with one another rather than the isolated, objective knowers of Cartesian epistemology. Interpretation is unavoidable: there exist no rock-bottom observational data uninfected by theory. Our knowledge, in other words, is inescapably holistic; as Quine taught, our theories meet reality as a corporate body, not one by one. Hermeneutics argues for the non-methodical, non-algorithmic nature of our knowledge; the very criteria for knowledge are subject to question, implicitly and sometimes explicitly "up for grabs." Theoretical rationality is unavoidably social, intersubjective, and ultimately grounded not on any Method but on shared norms—norms such as tolerance, a willingness to submit to the better argument, and participation in a Socratic conversation with members of the community.

Much has been written (e.g., Hollis 1994) on the methodological alternative to Cartesian views of theoretical rationality offered by broadly postmodern approaches, so we have summarized hastily in order to get to our special concern in this essay: some implications for *practical* rationality that hermeneutic philosophy might be taken to have. How do the hermeneutic themes of interpretation, antimethodism, the intersubjectivity of reason, and the like bear, if they bear at all, on the economist's understanding of practical reason and agency? And beyond that, what sort of politics, if any, is associated with hermeneutic approaches?

## *Hermeneutics vs. Markets*

Hemeneuticists are associated with all sorts of political-cum-economic positions. The question, though, is whether this is a *reasonable* pluralism, whether there is any association between hermeneutics and politics that is other than contingent or accidental. Stanley Fish, among others, would answer in the negative:

> What we now have as a result of the rhetorical, postmodern, deconstructive, poststructuralist, neopragmatist revolution is a new account of our epistemology, that is, a new belief about where our beliefs came

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> from. The mistake is to think that by adding this new belief, our other beliefs about things other than epistemology will be altered. (1988, 28)

This mistake is what Fish calls "anti-foundationalist theory hope." We confess to having such hope, to believing that hermeneutic insights about *philosophical* rationality and agency have the capacity for altering views about *economic* and *political* rationality and agency. We share this hope with those Austrian-school economists who have appropriated hermeneutics to underwrite their political and economic views. We agree with them, against Fish, that is, that hermeneutics bears on our subject; we disagree, though, on how it bears.

Most of the antifoundationalist theory hopers that Fish runs into in his discipline, literary criticism, and in the noneconomic social sciences generally, are on the left wing of the political spectrum. The late coming of antifoundationalism to economics, most prominently associated with the work of Donald McCloskey (1985) on the rhetoric of economics, however, has been largely associated with the right. McCloskey often sounds like Fish—denying that antifoundationalism cuts one way or another in substantive political economy—but, when he deviates, it is toward a distinctly rightward version of antifoundationalist theory hope (McCloskey 1994). In a presentation at the 1996 American Economics Association meetings, McCloskey argued that the essential insights of postmodern thinking were already present in Scottish Enlightenment thinkers such as Smith and Hume, and that these insights about knowledge fit comfortably with their social theory.

One of the forerunners of the hermeneutics-liberalism link was the venerated Austrian economist F. A. Hayek. His introduction of subjectivity and interpretation to the discipline of economics have caused many to label him as an early hermeneuticist (see Burczak 1994, Lavoie 1994, and Madison 1989 and 1994). Hayek held that it is impossible to know and understand the world and its ordering principles objectively. Hence, any attempts at economic planning are doomed to failure, because no one is capable of attaining the knowledge required by an economic plan. However, if people are left alone—i.e., guaranteed negative liberty and protected by the laws of the classical liberal society—then, through interaction with one another, a desirable society will emerge. The necessary rules and institutions that the economic planner could not anticipate will naturally evolve; the culmination of the evolution is a "spontaneous order"

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(Hayek 1960, 159–61). Not surprisingly, given his prescription of negative liberty, Hayek envisioned the free market as a spontaneous order, and the classical liberal society as the most desirable political order (1960). Thus, Hayek claimed that an approach that today is characterized as hermeneutic prescribes negative liberty as necessary and sufficient to determine and achieve the good in the economic and political realms.

Besides McCloskey, contemporary thinkers such as G. B. Madison and Tom G. Palmer make no bones about what they see as a symbiotic relationship between hermeneutics and a classically liberal political economy, so we intend to look at their arguments very carefully. Our view is that there is a prima facie tension between the intersubjectivity of a hermeneutic view of reason and agency and the project of the Austrian hopers. Although hermeneutics has spawned both right and left politics, a common thread has been communitarianism of some sort. If we are right that this association is not contingent, then the Austrian attempt to link hermeneutics and classical liberalism would seem to have some work to do to be convincing.

If there is an overriding theme in hermeneutics, it is the theme of "conversation" and dialogue, and the way that engaging in a conversation openly leads to an enlargement of the "mutual horizons of understanding"—changing, in some degree, the very identity of the participants. Hermeneuticists build not only an epistemology, but a philosophical anthropology, an ethics, and, arguably, a minimalist politics around this theme. To see the minimalist politics that such an approach seems to carry with it, we turn to the American rhetorician Wayne Booth.

Booth's *Modern Dogma and the Rhetoric of Assent* (1974) emphasizes the noninstrumental nature of language—the way that, for a rhetorician, we are made in language. For Booth, language is not a tool for achieving our pre-formed purposes; rather it shapes who we are. Although homely and American, rather than portentous and Continental, Booth is, in this respect, at one with thinkers such as Gadamer and Heidegger, as in the latter's dictum that "Language is the House of Being." Instrumental uses of language are secondary and parasitic on its primarily noninstrumental, constitutive character.

The predominant concern of Booth's book is to challenge the modernist dogma that we cannot reason about values—that is, to challenge the fact/value distinction typically encountered in the opening pages of an economic textbook. The idea that our value

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

judgments constitute a noncognitive expression of emotion rests on an incorrect, foundationalist conception of knowledge, he argues. When we give reasons for our evaluations in a conversation guided by the Socratic norms of openness and a willingness to have our minds changed, allowing ourselves to be "taken in," in the good sense, by our interlocutor, we are not "expressing emotion." Rather, we are engaged in a cognitive endeavor par excellence; a quest, if you like, for self-understanding. Articulating who we are in dialogue with others is the way we achieve self-understanding, as Charles Taylor (1989) might put it. Such knowledge doesn't fit an objectivist model: our articulation of it clearly shapes its object, despite the fact that, as Taylor emphasizes, it is not pure invention—we are trying to be true to a reality, and our self-understanding is corrigible.

Early on, and mostly independently of developments in Continental philosophy, Booth's little book advanced the main themes of hermeneutics. Did this loose philosophy, in his view, have any implications for politics and/or economics? At first (1974, 201) he strikes a Fishian note: "To adumbrate a rhetoric of assent butters no parsnips; nothing in such a rhetoric can tell me how to live. . . . It gives me no true metaphysic, no religion, no political theory." But then follows a long and strongly written footnote:

> A rhetoric of assent does lead, generally but firmly, to important political conclusions. Some of them will seem conservative, at least in our society, though in most societies in the world's history they will seem revolutionary enough: traditions of free discourse, of respect for persons, of civil rights, of democratic process become defensible in this view not simply as traditions but as the very conditions for fulfilling man's life as we have defined it. But some of them are radical enough: for example, "capitalist" forms of production and distribution, as now defined, must be discarded, insofar as they depend on systematic deception. An economic system that rewards those who are most willing to corrupt the language in order to "take in" by deception will destroy all hope of a rhetoric that depends on honorable "taking in." As our political life is more and more conducted with the deceptive techniques borrowed from commercial advertising, politicians become less and less interested in the exchange of good reasons; voters become more and more cynical; exposés of corruption become more frequent and less effective; and finally, a point will be reached, if it hasn't already been passed, when there is insufficient public trust for democratic processes to work.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> It is thus not just the advertising and political propaganda spawned by capitalism that must go: the whole "liberal" assumption that men are not accountable to their fellows for how they acquire and spend their private fortunes is untenable, if men are inherently accountable to their fellows. The individualism that produced economic liberalism was, as Marx taught, grotesquely destructive of the self and of society: both the exploiters and the exploited become, in such a system of "free enterprise," radically alienated from their "selves," and—what is the same thing—from each other. (1974, 201–202)

We quote Booth at length because he adumbrates many themes made by hermeneutic writers in more technical language, effectively throwing down the gauntlet for a would-be classical liberal hermeneuticist. We should add that the tenor of Booth's argument puts the "rhetoric of assent" on the side of the philosophic communitarians of the early 1980s (e.g., Sandel 1982) on the question of whether politics, and public reason, ought to be concerned solely with questions of the right, or whether questions about the good life ought also to be legitimate foci of our politics. Where Rawlsian liberalism would proscribe political consideration of the good, treating individual conceptions of the good life, in effect, as the neoclassical economist treats preferences—*De gustibus non est disputandam*—communitarians envision a public reason that would concern the good as well as the right, a politics not limited to what Taylor has called a "rights-retrieval" model. We do not express respect for others' views of the good, Booth would say, merely by tolerating them, but by actively engaging them in conversation.

### *Markets as Conversations*

Now let us turn to an essay by Tom G. Palmer to see a programmatic statement of the connection between hermeneutics and libertarian thought. The essay, "The Hermeneutical View of Freedom," opens with a nice summing up of some basic hermeneutic themes, especially Gadamer's notion of dialogue and conversation. Gadamer writes, for example, that "in human relationships the important thing is, as we have seen, to experience the 'Thou' truly as a 'Thou,' i.e., not to overlook his claim and to listen to what he has to say to us." Palmer glosses this citation thus: "The model of conversation provides a model of human intercourse. . . . It is persuasion . . . which

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

characterizes the proper relationship of one human life to another" (Palmer 1990, 302).

In short order, Palmer is citing Adam Smith to the effect that exchange relations are, at root, conversations: "'The offering of a shilling, which to us appears to have so plain and simple a meaning, is in reality offering an argument to persuade one to do so and so as it is in his interest'" (303). Now, we submit that no one who has seriously read Gadamer's *Truth and Method* is at all likely to mistake the "offering of a shilling," or the higgling and haggling of the market, to be instances of a Gadamerian conversation. Persuasion, yes; the opening of an "I" to a "Thou" in an effort to achieve mutual understanding, hardly.

The speech of the marketplace is paradigmatically instrumental speech, not the potentially transformative speech that is the focus of both Gadamer and Booth's work. To paraphrase Smith, it is not the fusion of our respective mutual horizons of understanding that the butcher and I count on to satisfy my need for bread and his for money—not by a long shot. We appeal, rather, to one another's self-interest.

Palmer is not alone in conceiving the conversation of the marketplace as analogous to a Gadamerian conversation. Steven Horwitz (1992) uses this analogy to argue for the necessity of interpreting the language and the words of the market (money and prices, respectively) as Gadamerian conversation must be interpreted. Horwitz apparently feels that it is sufficient that both language and money can be characterized as vehicles of communication for a market conversation of prices to be analogous to a Gadamerian conversation of words:

> Just as language allows us to understand, through our own frameworks, the linguistically-constituted thoughts of others, so does money allow us to draw out and interpret the tastes, preferences, and values of others. Language and money do not *reveal* some pre-existing mental constructs or preferences, rather they *constitute* the way in which we express those constructs and preferences. As there are no real communicated thoughts outside of language, so there are no real market-relevant wants outside of their expression in terms of money. (1992, 206–207, emphasis in original)

It is true that money and prices are similar to language and words in many ways; both convey some information, for instance. But it

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

does not follow that the language of the marketplace can be characterized as a Gadamerian conversation. While language communicates "thoughts," money communicates "market-relevant wants." While language may convey thoughts and ideas for instrumental purposes, it is also a means of communication for *non*instrumental purposes. The language of a truly Gadamerian conversation communicates thoughts for a noninstrumental purpose—a truly communicative purpose, in Habermasian terms. In contrast, the communication of market-relevant wants can hardly be characterized as anything but instrumental. The idea that the language of money and prices is noninstrumental, that it *constitutes* the wants it expresses just as a Gadamerian conversation constitutes the selves of its participants, would abolish any distinction at all between genuinely communicative and instrumental uses of language, and in so doing, would cheapen the former.

In fact, markets, in Habermasian terms, are institutions that explicitly set aside communicative rationality, for efficiency's sake, so as to let strategic or instrumental rationality have full sway. Markets needn't be condemned for this, provided that communicative rationality is brought to bear at some point in deciding that the particular goods provided by markets can be safely relegated to such "steering mechanisms"—i.e., that the ways we value such goods are consistent with their nondeliberative provision (see Anderson 1993). It is preposterous and dangerous to pretend, though, as both Palmer and Horwitz do, that instrumental rationality *is* communicative rationality.

Communication driven by communicative rationality is not merely a means; it is an end in itself. Through such communication, individuals seek to achieve mutual self-understanding and in the process to create, discover, and transform their respective selves and societies in the manner delineated by Taylor. Community members are not incorrigible, omniscient beings; therefore they must engage in a conversation to determine selves and societies worthy of achievement and to determine which means to these ends are desirable. The conversation of the market is devoid of such ethical inquiry.

In support of his position, Horwitz (1992, 207) cites David L. Prychitko: "'Spontaneously formed market institutions are *not* the result of atomistic individuals responding to a given array of prices, but the result of individuals already involved in truly dialogical relationships.'" But immediately following this particular sentence, Prychitko (1988, 137) writes that "trade journals, industry studies, marketing agreements, business lunches, conference calls, higgling and haggling,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the interpretation of accounts and so on are all part of the grand conversation we call the market process." These elements of the market conversation are decidedly undertaken for instrumental purposes—to organize sellers and buyers, to maximize profits, to negotiate business deals, etc. There is no seeking for mutual self-understanding or moral inquiry here. The primary elements of a Gadamerian dialogue are simply not present.

While Prychitko may be correct in noting that the creation of markets is possible because people are already engaged in "truly dialogical relationships," it is doubtful that such a relationship (if it is in line with Gadamer's ideas) could be successfully transplanted to the marketplace and subsequently preserved. As Gus DiZerega has pointed out, the governing norms of the market encourage a mindset that is poisonous to the communicative rationality that characterizes a Gadamerian conversation. In his description of democratic debate and the values that characterize it, DiZerega clearly understands what it means to be engaged in a Gadamerian conversation, even though he does not attach this label to such relationships. He notices that the market caters to and embraces the private self, squeezing out any predilection to engage in communicative rationality: "Markets predispose people to activity which is instrumental to their personal and material self-interest . . . depersonaliz[es] relationships," and punishes those who do not act in accordance with the values deemed most worthy by the market by placing them at a competitive disadvantage (1989, 232–2).

Palmer, Horwitz, and Prychitko fail to differentiate between the instrumental purpose of money and the transformative, ethical purpose of language that constitutes a Gadamerian conversation. Palmer, in fact, locates a truly startling analogue to the "transformative" speech with which hermeneutics is concerned: advertising.

Palmer (1990, 308) tells us that "advertising . . . should be rehabilitated in terms of voluntary persuasive behavior." Thus, presumably, the advertiser is engaged in a Gadamerian conversation with his or her audience—an "I" and a "Thou" seeking mutual understanding. This is to take a process that, by its very nature, corrupts speech, where words are precisely actions designed to advance one's own interests, and hold it up as paradigmatic of communication.

For Palmer (1990, 308), the identity transformation, the *Bildung* that a conversation whose participants obey the norm of openness to one another can potentially effect, is mirrored by the consumer con-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

vinced by good advertising that "something previously unwanted should be wanted." He writes: "The persuasive aspect of advertising is made more understandable when the 'openness' of processes of human interaction is considered. . . . The writer of a recent history of the video-cassette recorder writes of 'the idea of educating the market to the virtues of a product of intuition rather than market research.'" (ibid.).

The root of the problem is that for Palmer, the market is a realm of discourse because the realm of a discourse proper is itself a market—a "marketplace of ideas." Thus, he writes that "the voluntary competition of a free market . . . is not limited to the competition of ideas as expressed in speeches (the marketplace of ideas)" because "the discourse of society extends beyond the spoken, to encompass the exchanges of the market." The hermeneutic notion of conversation, however, is antithetical to market norms. The "marketplace of ideas" is, to our minds, one of the most stultifying and meretricious phrases ever coined. In a Gadamerian conversation, we seek to understand one another and the object of our conversation. We build a common world and, in the process, change one another. This cannot be reduced to a competition of interests without draining words of their significance.

The tendency to see the workings of "markets" everywhere, the effect of which is ultimately to render nonmarket spheres of life invisible, is not unique to Palmer. It has a long standing in the Austrian libertarian tradition. As Laurent Dobuzinskis (1989, 251) has put it, "Hayek remains an economist, in spite of his catholic interests and encyclopedic erudition. . . . He does not submit assumptions drawn from the market order to a critical re-examination before extending them to other spheres of human action."

Lest it be thought that the tendencies we've pointed out are idiosyncratic to Austrian economists, we turn now to a Chicago-school economist, McCloskey, where we find the same sort of thing.

McCloskey is fond of quoting D. H. Robertson's dictum that what markets economize on ultimately is love. It's the only thing, as the song says, that there's just too little of. To understand this function of markets, it won't do to see them as embodying norms of love and openness in their workings. Because the butcher's benevolence need not be engaged in providing our bread, she has more benevolence—at least Smith thinks so—for her family and for the forum. The tendency in libertarian thought is precisely to downgrade and ignore

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

these other spheres of life—the forum especially—because all of what might be thought of as nonmarket needs are loaded into the market. You want conversation? Here's a shilling! You want to pursue your identity and not just your interests? Listen to the advertisers!

McCloskey, too, conflates speech with the marketplace: the speech community of economists becomes a marketplace of ideas that reaches an equilibrium that no omniscient Methodologist could have predicted. However, McCloskey (1994, 336) "takes the order of the economy to be the same as the order of speech"—reversing the marketplace-of-ideas metaphor, since the marketplace is itself saturated with speech. There is a chicken-and-egg problem here. Which comes first, markets or discourse/rhetoric/speech? The market is speech, which is a market, which is speech. . . . We are in a self-sustaining but Pareto-dominated equilibrium here, like the users of QWERTY are supposed to be.

In McCloskey's "The Economy as A Conversation" the speech engaged in by the economic actor is predominantly instrumental: Donald Trump is served up as an exemplar of the economic agent as *rhetor* (1994, 369–70). Compare the way that Habermas, another antifoundationalist, substitutes conversation and communication for the Cartesian model of science. Here, the distinction between strategic and communicative action, and the corresponding distinction between instrumental and communicative rationality, is crucial. But it is completely elided in McCloskey's work.

As the rhetorician James Boyd White has pointed out, "persuasive" speech can be of two very distinct sorts. "Honest persuasion," or *peithos*, persuades by "constituting a community" between speaker and listener (White 1985, 6). The other form of persuasive speech White calls *dolos*—"a sort of trick, or deceitful stratagem" (ibid., 7). This is persuasion as "the art of manipulating others to adopt one's position," while *peithos* is "the art of stating fully and sincerely the grounds upon which one thinks common action can and should rest" (ibid., 17). White associates *dolos* (which is comparable to Booth's dishonorable form of "taking in") with means-end rationality and market economics (ibid., 21).

In McCloskey's work, the persuasive speech of an advertiser or of a Donald Trump is treated on the same level as the persuasive speech of the *rhetor*. In a thoroughly instrumental society, *peithos* itself becomes the raw material of *dolos* (and thus loses, necessarily, its character as *peithos*), as capitalists learn to employ constitutive, community-creat-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ing rhetoric to motivate their employees. This tendency is offered up by McCloskey as one more bit of evidence that the order of the economy mirrors the order of speech. "Motivating people by deals will work only if the deals convey to them the right story of their own lives" (1994, 374), he comments, after excerpting a novelist's account of an entrepreneur persuading his employees to "reach by their own reasoning the solutions he had himself already determined upon" through an adroit use of the "Socratic Method" (sic).

When McCloskey argues that his critics misunderstand him by failing to see that he reads the marketplace of ideas metaphor both ways, therefore, it is not very reassuring. In fact, if the metaphorical marketplace in ideas works like the speech-saturated marketplace he presents in "The Economy as Conversation," *caveat emptor*!

## *Hermeneutics and Communitarianism*

Now we turn to what seems on the surface to be Gary Madison's very different reading of the link between hermeneutics and libertarian/liberal political economy. If, in the previously considered writers, a *distinct* realm for speech and communicative action—such as the Greeks and modern writers such as Arendt and Habermas conceive the political to be—has vanished into the marketplace, in Madison the political seems to get its due.

Underlying this apparent difference, however, is a predictable dialectic exhibited by all liberal conceptions of the self and of human agency, a dialectic that was perhaps most shrewdly and eloquently analyzed in Michael Sandel's critique of John Rawls. Sandel argues that the Rawlsian and, generally, liberal dictum that "the right is prior to the good" is intimately tied up with a highly problematic understanding of the self as prior to its ends:

> The Rawlsian self is not only a subject of possession, but an antecedently individuated subject, standing always at a certain distance from the interests it has. . . . But a self so thoroughly independent as this rules out the possibility of any attachment (or obsession) able to reach beyond our values and sentiments to engage our identity itself. *It rules out the possibility of a public life in which, for good or ill, the identity as well as the interests of participants could be at stake.* And it rules out the possibility that common purposes and ends could inspire more or less expansive self-understandings and so define a community in the con-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> stitutive sense, a community describing the subject and not just the object of shared aspirations. More generally, Rawls' account rules out the possibility of what we might call intersubjective or intrasubjective forms of self-understanding, ways of conceiving the subject that do not assume its bounds to be given in advance. Unlike Rawls' conception, intersubjective and intra-subjective conceptions do not assume that to speak of the self, from a moral point of view, is necessarily and unproblematically to speak of an antecedently-individuated self. (Sandel 1982, 62, emphasis added)

The Sandelian self is not prior to its ends, but has "constitutive attachments." As a consequence, he argues, agency is less a matter of the choice of ends—the "voluntaristic agency" that the liberal self exhibits—than it is cognitive. The Sandelian self exercises agency by achieving "self-understanding": "Where the ends of the self are given in advance the relevant agency is not voluntarist but cognitive, since the subject achieves self-command not by choosing that which is already given (this would be unintelligible), but by reflecting on itself and inquiring into its constituent nature, discerning its laws and imperatives, and acknowledging its purposes as its own" (Sandel 1982, 58).

The notion of self-understanding Sandel uses is highly indebted to the work of Charles Taylor. That human agency is a matter of self-interpretation—neither a following of pregiven desires nor a radical choice—is a characteristically Taylorian hermeneutical theme. In this matter of interpretation, we are not self-sufficient. We rely on a language and a community that places us in what Taylor (1989) calls a "moral horizon." The Rawlsian self *either* reads the good off incorrigible pregiven desires or engages in an act of radical choice of the good. According to Taylor and Sandel, however, the human agent struggles to articulate her identity, an articulation that partly shapes what it is about, while needing nonetheless to be true to something that is not pure invention. As Taylor says, the process is "part creation, part discovery."

This seems to us to be essentially an application of hermeneutics to norms. The focus on a corrigible *self*-understanding matches Gadamer's focus on text- or world-interpretation. Since, for Gadamer, understanding is "part creation, part discovery," he leaves the subject/object dichotomy behind. This hermeneutic conception of agency—if it may be properly so called—is, for both Sandel and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Taylor, the underpinning of a strong philosophical communitarianism, one that calls, as in the long passage from Sandel, for a public life "in which the identity as well as the interests of participants could be at stake."

Because, for both Sandel and Taylor, the self is not prior to its ends, neither is the right prior to the good. Both writers therefore espouse a "deliberative" conception of democracy according to which democratic life is a forum for deliberating about views of the good life—not merely a battlefield where arbitrary preferences are expressed and aggregated, but a space where views of the good that must be judged right or wrong are expressed (cf. Sagoff 1988). This view of politics rejects a purely proceduralist view of public life—the realm of a strictly *negative* freedom, if you like—and espouses, instead, a conception of a public realm where people, through dialogue and deliberation, are *positively* free to "achieve" or realize themselves—a notion of which the voluntaristic conception of agency can make no sense (Taylor 1985; Quinn 1996; Berlin 1969).

Liberals imagine a more or less empty self, separated from any ends or attachments. Either this self, because it is empty, collapses into its attachments and ends (i.e., its "preferences"); or the two remain starkly separated. These two options produce distinctive sorts of politics. In the one, politics collapses into markets (as occurs in Palmer and McCloskey). In the other, exemplified by Madison, the radically separated but empty self is mirrored in a thoroughly proceduralist conception of the political.

Madison's work, especially his book *The Logic of Liberty* (1986), is the most sophisticated effort we know of to link hermeneutics with a classically liberal political philosophy. Unlike the libertarian writers considered earlier, Madison is quite clear on the distinction between what he calls "practical-instrumental" and "communicative-critical" reason, i.e., that between instrumental and communicative rationality. He thinks of the political as the sphere of life where communicative rationality, the legacy of hermeneutics, comes into its own. But in Madison's work, unlike that of Taylor and Sandel, communicative rationality becomes the underpinning of a proceduralist and dessicated conception of public reason. The collective search for identity exhausts itself in the shaping of rules of the game, procedures—ultimately, a political constitution—that all will abide by in the pursuit of their individual interests.

Thus, Madison maintains that "in communicative rationality the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

'truth', that is, the agreed upon, is not extrinsic to the reasoning process itself. . . . That it is expressive of nothing other than the fact that an agreement has been reached means that it is not 'discovered'" (1986, 218). In stark contrast to Sandel and Taylor, Madison believes it follows from his communicative conception of rationality that the common good "is nothing other than the social contract arrived at through contractarian discussion, which is to say that it is the commonwealth or republic itself, the universal all-embracing institutional context which accords individuals and groups the freedom to pursue their own particular and varying interests within the limits dictated by a respect for the interests of others" (ibid., 233). This is glossed with a quotation from Hayek, who argues that "the only common values of an open and free society are . . . those common abstract rules of conduct that secure the constant maintenance of an equally abstract order which merely assures the individual better prospect of achieving his individual ends" (ibid., 234).

Madison (1991) recognizes that hermeneutics prescribes a Gadamerian conversation in the political realm, but he contends that such a conversation can be secured if all people are guaranteed negative liberty by a constitution. In "Phenomenology and Economics," he boldly asserts that "hermeneutics not only embodies a general theory of human understanding, it also entails a specific *political* theory. . . . This theory is one which best fits the market process. . . . The political theory implicit in Austrian economics is identical with the one which follows from hermeneutics" (1994, 46, emphasis in original). But if there can be no substantive common good, what is this conversation *about*? Negative liberty may be necessary for such a conversation, but it is hardly sufficient.

The conversation that a hermeneuticist would like to see the political become cannot be substituted for by the conversation about interests that goes on in the market. But neither can it be restricted, à la Madison, to a conversation about the rules of the game, to constitution-making. The rules are the beginning, not the end, of a genuinely political life conceived along hermeneutic lines.

Dobuzinskis's critique of the libertarian ideal of the realm of negative freedom is thus very much in the spirit of a properly hermeneutic approach to politics. He argues for a political freedom "equated with active self-realization" (1989, 255):

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> When options that can be realized only through concerted, participative and creative actions in a public arena are precluded [by the individualistic pursuits allowed by negative liberty], the freedom of the members of such an atrophied political community is constrained. The content or subject-matter of freedom counts as much as the procedures that we use for guaranteeing freedom. Thus positive freedom must also be developed to break obstacles to communication and involvement. (Ibid., 253–54)

Dobuzinskis adds that to reduce political rights to negative freedom is to deny our humanness, in that "the rationalized, impersonal definition of the 'individual' upon which" the rules of a liberal order "are grounded makes it harder to relate to others as 'brothers/sisters' sharing a common humanity" (ibid., 259).

The two very different ways of appropriating hermeneutic thought to underwrite a libertarian politics—those of Palmer, Horwitz, and McCloskey, on the one hand, and Madison on the other—exhibit between them the negative dialectic of the liberal voluntaristic agent understood as prior to its ends. The essential emptiness of this self produces the urge to merge with its ends and become, in Rawls's phrase, a "purely preferential chooser," just as communicative reason is reduced to instrumental reason in Palmer, Horwitz, and McCloskey. Left alone in its emptiness, on the other hand, the voluntaristic agent's choice becomes radical because it is criterionless, and we get the stark proceduralism of a Madison. For different reasons, each form of libertarianism empties the political of any content. Were agency to be conceived along the genuinely hermeneutic, cognitive lines set out by Taylor and Sandel, libertarianism would be decisively rejected. Instead of being enlisted in the ideological defense of the negative freedom so beloved of liberals, hermeneutics would find its *telos* in Auden's instructions for the poet:

> In the prison of his days
> Teach the free man how to praise.

## REFERENCES

Anderson, Elizabeth. 1993. *Value in Ethics and Economics*. Cambridge, Mass.: Harvard University Press.

Berlin, Isaiah. [1958] 1969. "Two Concepts of Liberty." In idem, *Four Essays on Liberty*. Oxford: Oxford University Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Boettke, Peter J., ed. 1994. *The Elgar Companion to Austrian Economics*. Aldershot, England: Edward Elgar.

Booth, Wayne. 1974. *Modern Dogma and The Rhetoric of Assent*. Chicago: University of Chicago Press.

Burczak, Theodore A. 1994. "The Postmodern Moments of F. A. Hayek's Economics." *Economics and Philosophy* 10: 31–58.

DiZerega, Gus. 1989. "Democracy as a Spontaneous Order." *Critical Review* 3(2): 206–40.

Dobuzinskis, Laurent. 1989. "The Complexities of Spontaneous Order." *Critical Review* 3(2): 241–66.

Fish, Stanley. 1988. "Comments from outside economics." In *The Consequences of Economic Rhetoric*, ed. Arjo Klamer, D. N. McCloskey, and R. Solow. Cambridge: Cambridge University Press.

Gadamer, Hans-Georg. 1975. *Truth and Method*. New York: Seabury Press.

Hayek, F. A. 1960. *The Constitution of Liberty*. Chicago: University of Chicago Press.

Hollis, Martin. 1994. *Philosophy of Social Science*. Cambridge: Cambridge University Press.

Horwitz, Steven. 1992. "Monetary Exchange as an Extra-Linguistic Social Communication Process." *Review of Social Economy* 50: 193–214.

Lavoie, Don, ed. 1990. *Hermeneutics and Economics*. New York: Routledge.

Lavoie, Don. 1994. "The Interpretive Turn." In Boettke 1994.

Madison, Gary. 1986. *The Logic of Liberty*. New York: Greenwood Press.

Madison, G. B. 1989. "Hayek and the Interpretive Turn." *Critical Review* 3(2): 169–83.

Madison, G. B. 1991. "The Politics of Postmodernity." *Critical Review* 5(1): 53–79.

Madison, G. B. 1994. "Phenomenology and Economics." In Boettke 1994.

McCloskey, D. N. 1985. *The Rhetoric of Economics*. Madison: University of Wisconsin Press.

McCloskey, D. N. 1994. *Knowledge and Persuasion*. Cambridge: Cambridge University Press.

Palmer, Tom G. 1990. "The Hermeneutical View of Freedom: Implications of Gadamerian Understanding for Economic Policy." In Lavoie 1990.

Prychitko, David L. 1988. "Marxism and Decentralized Socialism." *Critical Review* 2(1): 127–47.

Quinn, Kevin. 1996. "A Rhetorical Conception of Practical Rationality." *Journal of Economic Issues* 30: 1127–42.

Sagoff, Mark. 1988. *The Economy of the Earth*. Cambridge: Cambridge University Press.

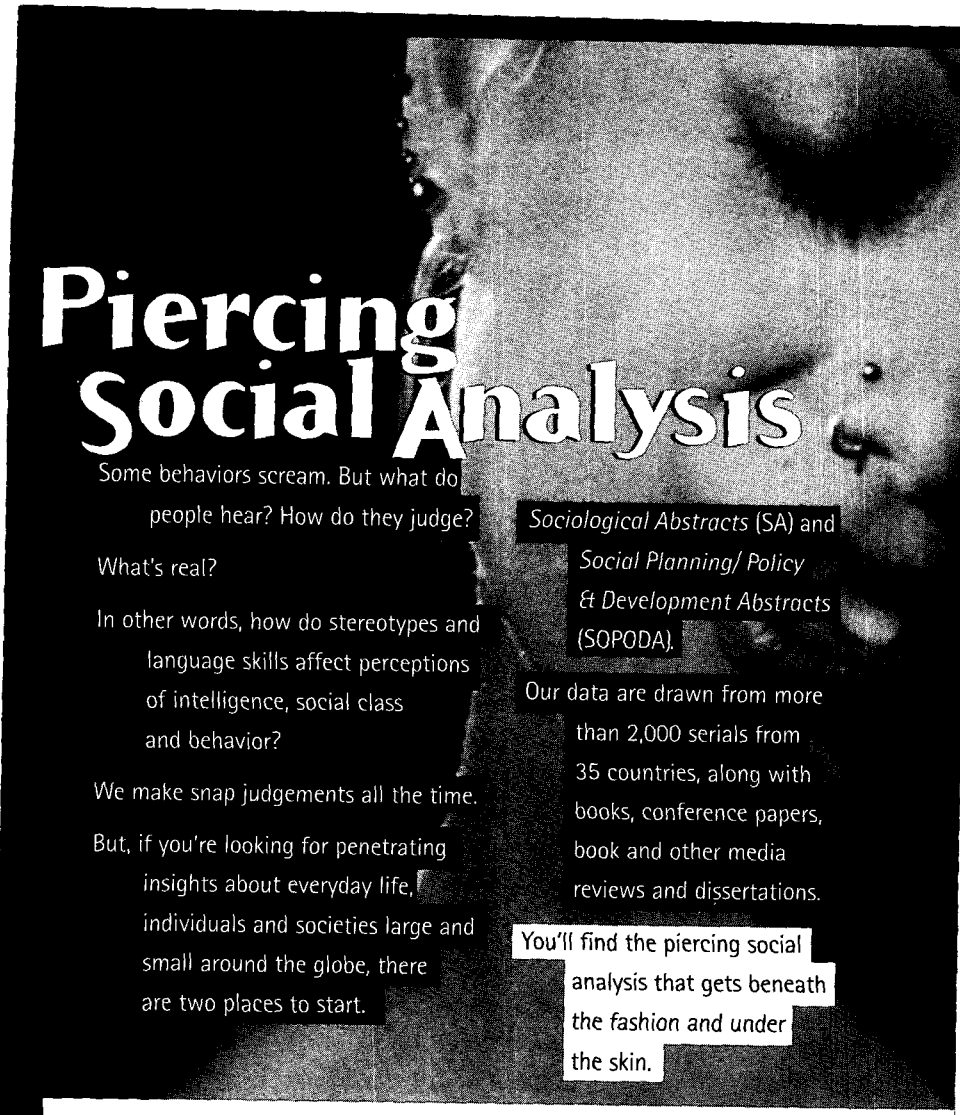
Sandel, Michael. 1982. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.

Taylor, Charles. 1989. *Sources of the Self*. Cambridge, Mass.: Harvard University Press.

Taylor, Charles. 1985. "What's Wrong with Negative Liberty?" In idem, *Philosophy and the Human Sciences*. Cambridge: Cambridge University Press.

White, James Boyd. 1985. *Heracles' Bow*. Madison: University of Wisconsin Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



# Piercing Social Analysis

Some behaviors scream. But what do people hear? How do they judge? What's real?

In other words, how do stereotypes and language skills affect perceptions of intelligence, social class and behavior?

We make snap judgements all the time.

But, if you're looking for penetrating insights about everyday life, individuals and societies large and small around the globe, there are two places to start.

*Sociological Abstracts* (SA) and *Social Planning/ Policy & Development Abstracts* (SOPODA).

Our data are drawn from more than 2,000 serials from 35 countries, along with books, conference papers, book and other media reviews and dissertations.

You'll find the piercing social analysis that gets beneath the fashion and under the skin.

**sociological abstracts**

P.O. Box 22206 San Diego, CA 92192-0206
**619/695-8803** Fax: 695-0416
Internet socio@cerfnet.com
User Assistance: 800/752-3945

The SAI family of services: *Sociological Abstracts* (SA) • *Social Planning/Policy & Development Abstracts* (SOPODA) • *sociofile* (SA and SOPODA on CD-ROM) • Products are available in print; online from Knight-Ridder, DIMDI, OCLC, and Ovid; on CD-ROM from SilverPlatter, EBSCO and Ovid; on magnetic tape via SAI direct. Document delivery available via SOCIOLOGY*Express: 800/313-9966; 415/259-5013; Fax 415/259-5058; email: socabs@ebscodoc.com


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Tom G. Palmer*

# G. A. COHEN ON SELF-OWNERSHIP, PROPERTY, AND EQUALITY

ABSTRACT: *G. A. Cohen has produced an influential criticism of libertarianism that posits joint ownership of everything in the world other than labor, with each joint owner having a veto right over any potential use of the world. According to Cohen, in that world rationality would require that wealth be divided equally, with no differential accorded to talent, ability, or effort. A closer examination shows that Cohen's argument rests on two central errors of reasoning and does not support his egalitarian conclusions, even granting his assumption of joint ownership. That assumption was rejected by Locke, Pufendorf and other writers on property for reasons that Cohen does not rebut.*

In a number of articles, G. A. Cohen has set out an intricate set of arguments rebutting attempts to derive property claims in alienable objects ("world ownership") and non-patterned distributions of income ("capitalist inequality") from property claims in one's person ("self-ownership").[1] As Cohen (1995, 14) describes his enterprise in *Self-Ownership, Freedom, and Equality,* "I entertained an alternative to Nozick's 'up for grabs' hypothesis about the external world, to wit, that it is jointly owned by everyone, with each having a veto over its prospective use. And I showed that final equality of condition is as-

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Tom G. Palmer, Senior Fellow in Moral and Political Thought, Cato Institute, 1000 Massachusetts Avenue NW, Washington, DC 20001, telephone (202) 789-5299, telefax (202) 842-3490, e-mail tpalmer@cato.org, thanks G. A. Cohen, Chandran Kukathas, John Gray, Raymond Plant, and other readers for comments on earlier versions of this paper.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sured when that egalitarian hypothesis about ownership of external resources is conjoined with the thesis of self-ownership." Cohen concludes that "equality had indeed been derived with no breach of the rules of self-ownership" (ibid.), a result that, when conjoined with additional arguments, "succeeded in exploding the libertarian position" (ibid., 15).

The argument—once one gets past Cohen's strange assumptions–is ingenious and has been extraordinarily influential. Will Kymlicka (1990, 118), for example, asks, in his *Contemporary Political Philosophy: An Introduction*, "What would happen if the world was [sic] jointly owned, and hence not subject to unilateral privatization? There are a variety of possible outcomes, but in general they will negate the inegalitarian implications of self-ownership."[2] Kymlicka cites, without rehearsing his argument, Cohen's authority in support of this strong claim. More recently, Justin Weinberg (1997, 324) has reproduced parts of Cohen's argument in an article in *Critical Review,* concluding that "Cohen shows that libertarianism cannot be defended in the way that most libertarian philosophers want to defend it."[3]

The conclusion that Cohen reaches and that has been so influential is, however, based on errors in Cohen's reasoning. There are numerous steps in the argument that may be open to objection, but even granting all of his assumptions, the logic of the argument fails.

I shall first outline Cohen's aims and general procedure. Second, I shall identify two crucial moves in his influential argument. Third, I shall show that the first move is insupportable. Fourth, I shall show that the second move is based on a confusion. I examine only two steps of Cohen's argument, but they are vitally important to his conclusions and, if they are wrong, his polemic against property in one's person, and against attempts to ground several property on this foundation, is severely weakened.

Finally, I will conclude with some general remarks about where this leaves Cohen and the issue of property rights. Cohen asserts that libertarianism is unjustified if we grant his assumption—offered without any argument whatsoever—that communism *is* justified. I conclude by rebutting this strange position.

Before turning directly to Cohen's case, I should offer a justification for plunging the reader into an often complicated and technical argument, so much so that few readers have bothered to read it carefully. Cohen's mistakes, although fatal to his enterprise of undermining libertarianism, are instructive. Cohen does not succeed in "ex-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ploding the libertarian position" (1995, 15), but his failed effort does draw our attention profitably to such matters as the role of expectations in determining bargaining outcomes, the limitations of purely hypothetical models for moral and political theory, and the importance of the history of legal and political institutions and of the history of moral, legal, and political thought. In his attack on property, Cohen conjoins the unjustified and untenable assumption of initial communism with faulty reasoning and an argument so convoluted that he becomes entangled in his own scenarios and confuses them, to the destruction of his enterprise.

## *Joint Ownership*

Cohen's principal concern is to defend a thoroughgoing egalitarian distribution of *income*, which he considers to be incompatible with an inegalitarian pattern of *ownership*. He asserts that "a union of self-ownership and unequal distribution of worldly resources leads to indefinitely great inequality of private property in external goods and, hence, to inequality of condition, on any view of what equality of condition is" (1995, 69). His concern is to delegitimize the appropriation of external resources by individuals or groups, by which they might come to have a property in such resources that would exclude the rival claims of others. Cohen takes as his sole target Robert Nozick's remarks on property in *Anarchy, State, and Utopia* and attempts to unravel the relationship Nozick asserts between private (or several) property and individual liberty. In doing so, Cohen affirms the plausibility of (without indicating ultimate agreement with) Nozick's insistence on each person's property in her person.[4] Cohen then reduces Nozick's entire theory of appropriation to Nozick's version of the "Lockean proviso," which holds that "a process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened" (Nozick 1974, 178). Cohen (1995, 76) considers the proviso, not as a proviso *to* a theory of appropriation, but simply to *be* Nozick's theory of appropriation; thus, the proviso just quoted, "with Nozick's elaboration of it, *is* Nozick's doctrine of appropriation; or, speaking more cautiously, if Nozick presents any doctrine of appropriation, then the quoted statement is the controversial element in his doctrine, and therefore the element which re-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

quires close scrutiny." I shall set to the side questions about whether Cohen has fairly characterized Nozick's proviso as constituting his principle of appropriation,[5] and will merely reproduce the conclusion of his treatment, as prolegomenon to his central argument that "self-ownership" can be so construed or integrated with other arrangements as to necessitate completely equal distribution of wealth and income.

Cohen (1995, 90) insists that any appropriation will make someone worse off, for no other reason than that someone will no longer be able to appropriate the now-appropriated item: "It is clear beyond doubt that an appropriation of private property can contradict an individual's will just as much as levying a tax on him can." If contradicting one's will is the criterion for a theory that is supposed to be based on liberty, then, according to Cohen, no private appropriation could meet the requirements of a suitably formulated Nozickian proviso, for, even if a latecomer finding no unappropriated resources left to appropriate were to be compensated by greater material wealth, this compensation could not undo the fact that the latecomer's will has been overruled. As Cohen (ibid., 89) argues, "Nozick disallows objectively paternalist use of people's private property. But he permits objectively paternalist treatment of people in other ways. For, since he permits appropriations that satisfy nothing but his proviso, he allows *A* to appropriate against *B*'s will when *B* benefits as a result, or, rather, as long as *B* does not lose." If someone were to chop off my arm, even if he later made me better off, we would still say that my rights had been violated.

In the process of making this move, allegedly showing that Nozick's approach cannot justify appropriation by individuals (or groups) from an unowned commons, Cohen suggests that Nozick's baseline of comparison–what one could get in a condition of no appropriation or ownership at all–is arbitrary, and that a variety of collective ownership arrangements should be considered as candidates for the baseline, as well.[6] There are, according to Cohen (1995, 78), "other intuitively relevant counterfactuals, and . . . they show that Nozick's proviso is too lax, that he has arbitrarily narrowed the class of alternatives with which we are to compare what happens when an appropriation occurs with a view to determining whether anyone is harmed by it." The alternative that he singles out as "intuitively relevant" is that of joint ownership, according to which a resource

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> is owned, by all together, and what each may do with it is subject to collective decision. The appropriate procedure for reaching that decision may be hard to define, but it will certainly not be open to any one of the joint owners to privatize all or part of the asset unilaterally, no matter what compensation he offers to the rest. . . . So if joint ownership rather than no ownership is, morally speaking, the initial position, then *B* has the right to forbid *A* to appropriate, even if *B* would benefit by what he thereby forbids. (Ibid., 83)

In setting up the problem, Cohen (1995, 92) strives to "reconcile self-ownership with equality (or not too much inequality) of condition, by constructing an economic constitution which combines self-ownership with an egalitarian approach to raw worldly resources." (Cohen never makes clear what "not too much inequality" can or should mean, or how one might know how much was too much.) The principle of joint ownership, according to Cohen, when combined with strict "self-ownership," would: 1) preclude individual or subgroup property rights (or property in severalty through subdivision) through free agreement, and 2) generate completely equal distributions of income (or, if any inequalities were to be allowed, they would not reflect differences in control over productive powers, i.e., they would not be due to one's property in one's person). Cohen tries to base both of those conclusions on the rationality of the parties. The point of Cohen's exertions is to attempt to show that self-ownership would not entail rights to several property, or world-ownership, under conditions of initial joint ownership of resources other than labor. Cohen claims that no individual or subgroup appropriation can meet a properly formulated Nozickian proviso against harm, so there can be no legitimate individual or subgroup appropriation from a condition of no-ownership. His next two steps are to argue that rationality would preclude mutually agreeable individual or subgroup division of the jointly owned assets, and that it would be irrational for joint owners to agree to unequal distribution of their joint product. These are the steps I will now contest.

## *Is Unequal Division of Jointly Owned Resources Irrational?*

The first of Cohen's two rationality-based arguments concerns the division of assets ("appropriation"). He rejects individual or subgroup

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

division or appropriation of jointly owned assets on the grounds that "*B* might have good reason to exercise his right to forbid an appropriation by *A* from which *B* himself would benefit. For, if he forbids *A* to appropriate, he can then bargain with *A* about the share of output he will get if he relents and allows *A* to appropriate. *B* is then likely to improve his take by an amount greater than what *A* would otherwise have offered him" (Cohen 1995, 84). According to Cohen, *B* does not seek a more equal distribution of assets, but the improvement of his "share of output" of the jointly owned asset.

It is not at all clear from the text how *B*'s veto threat would "improve his take" unless *B* might later relent and allow *A* to appropriate, in which case the output would no longer be jointly owned and subject to distribution. The argument that *B* might forbid *A*'s appropriation in order to hold out for a larger share of output is thus incoherent, for if *A* were to be allowed to appropriate, there would be no joint product to share.

Setting aside the above confusion, it bears noting that Cohen is careful to indicate that an agent "might" have good reason to refuse an appropriation, for the agent *also* might very well have good reasons to agree to such an appropriation. There are many observable cases, after all, in which jointly owned resources (e.g., in business partnerships and in marriage partnerships) are divided on the basis of free agreement. These occasions happen when some one or more of the following situations obtain:

(A) The parties no longer wish to cooperate, because of differences unrelated to the physical productivity of cooperation. (They may, for example, mutually prefer not to be subject to the veto powers of joint owners over the disposition of jointly owned assets.)

(B) The size or composition of the group of joint owners entails transaction costs, in coming to agreement over the disposition of the jointly owned asset, that are greater than the sum of the losses that would be suffered by even the worst off under a loss of the right to an aliquot portion of the income stream generated by a jointly owned asset. This would entail that those who would fare worst under division could still be compensated for their losses from the resources freed up by the elimination of the high transaction costs attributable to joint ownership. Under such conditions, and assuming that the transaction costs of a one-time negotiation and arrangement of a division were not prohibitively high, then it would be rational for the joint owners to agree to division of their jointly owned assets.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(C) One or more of the parties believe that she or they could manage a subdivided portion of the currently jointly owned resource better than the collectivity could, thereby generating a surplus. From this surplus she or they could offer the other joint owners compensation for the lost aliquot portion of the income stream they would have received from the asset were it to remain jointly owned.

(D) The joint owners differ in their discounting of future income streams, and have correspondingly different preferences for savings versus consumption, such that a division into several property would allow them to allocate income between investment and consumption differently. For example, if *A* prefers a policy of "Eat, drink, and be merry, for tomorrow we may die," whereas *B* prefers a policy of "A penny saved is a penny earned" (or if *A* simply has a shorter time horizon than *B*, due to advanced age or impending death, for example), then they may find it impossible to agree on whether to sacrifice current consumption for future satisfaction, and if so, what would be the best tradeoff; whereas with division, each would be able to satisfy her own preference, even if it were to come at the cost of a lower aggregate physical product.

Cohen's arguments attempt to show that, under conditions of joint ownership, division (appropriation) resulting in some inequality of assets would be irrational, but his arguments fail to justify that conclusion. Cohen is not clear on whether it is appropriation per se or appropriation that would result in unequal distribution of "output" that matters to him. Whichever it is, though, the argument fails.[7]

Cohen does allow for the possibility, at least under conditions of unanimity, of a precisely equal division of initial assets, in the manner favored by Hillel Steiner.[8] Joint ownership, unlike equal division, "forbids a Nozickian formation of unequal private property by placing all resources under collective control" (Cohen 1995, 102). Cohen (ibid., 105) admits that, under conditions of unanimity, joint ownership and equal division "may readily be converted into the other." But arrangements other than strict equality, and not including the entirety of the human race, or of all rational agents, seem to be ruled out *tout court*.[9]

Of course, if property in resources were to be divided and several property established, joint ownership could be voluntarily reestablished by the several owners agreeing jointly to recombine their assets into jointly owned assets.[10] But Cohen's insistence that joint owners

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

would not–or would be irrational to–agree to division is unsupported.

Before proceeding to the next serious error in Cohen's argument, a short digression about Cohen's misunderstanding of Nozick is in order, although this correction is not necessary to show the errors in Cohen's reasoning. Cohen (1995, 84) claims that "Nozick must suppose that the world's resources are, morally speaking, nothing like jointly owned, but very much up for grabs, yet, far from establishing that premiss, he does not even bother to state it, or show any awareness that he needs it." This is untrue; Nozick (1974, 178) clearly states that he believes that any ownership claim must be justified, whether collective or individual or mixed: "It is not only persons favoring *private* property who need a theory of how property rights legitimately originate. Those believing in collective property, for example those believing that a group of persons living in an area jointly own the territory, or its mineral resources, also must provide a theory of how such property rights arise; they must show why the persons living there have rights to determine what is done with the land and resources there that persons living elsewhere don't have (with regard to the same land and resources)." Rather than Nozick being guilty of "not even bothering to state . . . or show any awareness that he needs" such a theory, it is Cohen who fails to provide a theory of how or why joint ownership might be, or might have been, justified, beyond asserting that it is "intuitively relevant."

Again, however, this clarification is not essential to showing the error in Cohen's argument. Even granting Cohen's assumption of initial joint ownership, he has failed to show that it would be irrational to agree to divide ownership of assets.

## *Is Unequal Division of Jointly Produced Output Irrational?*

Cohen's second and more complex argument is an attempt to show that, assuming inescapably joint ownership (i.e., insisting that, contrary to historical experience and the considerations listed above, it would be irrational to agree to division), unequal contributions to a jointly produced product (i.e., a product to which all factor inputs save one—labor—are jointly owned) will result in precisely equal distribution of the joint product ("final equality of condition"). (This conclusion further assumes equal preference for leisure over labor;

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

what Cohen is concerned to show is that unequal marginal productivity, under such conditions, will not result in an unequal distribution of the joint product.) Cohen assumes, like Rawls, that all income is jointly produced and that the distribution of the joint product is to be the result of some sort of agreement among the joint owners. Where Cohen differs from Rawls is in granting, for the sake of his attempted refutation of Nozick, that the parties to the agreement know what their productive abilities are and have property in those natural talents. Joint ownership of external resources means that each owner has a full veto right over any proposed distribution of the joint product, because each has a veto right over the disposition of the factor inputs, other than labor, that contribute to the production of the joint product. Thus, Cohen writes that "I entertained an alternative to Nozick's 'up for grabs' hypothesis about the external world, to wit, that it is jointly owned by everyone, with each having a veto over its prospective use. And I showed that final equality of condition is assured when that egalitarian hypothesis about ownership of external resources is conjoined with the thesis of self-ownership" (14). Careful examination demonstrates, however, that Cohen's arguments do not show that "final equality of condition is assured."

Cohen (1995, 94) proposes that we consider a two-person world, populated by "Able" and "Infirm," in which there is an asymmetry in the productive capabilities of the two parties, who are jointly owners of all available external resources. In this situation, "Each owns himself and both jointly own everything else." Cohen (ibid., 95) then describes three cases in which bargaining between the two parties is impossible:

> i. Able cannot produce per day what is needed for one person for a day, so Able and Infirm both die.
>
> ii. Able can produce enough or more than enough for one person, but not enough for two. Infirm lets Able produce what he can, since only spite or envy would lead him not to. Able lives and Infirm dies.
>
> iii. Able can produce just enough to sustain both himself and Infirm. So Infirm forbids him to produce unless he produces that much. Able consequently does, and both live at subsistence.

In these three cases there is no surplus over which to bargain. The two cases in which bargaining over a surplus might take place are described as follows:

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> iv. If Able produces at all, then the amount he produces is determined independently of his choice, and it exceeds what is needed to sustain both Able and Infirm. They therefore bargain over the distribution of a fixed surplus. The price of failure to agree (the 'threat point') is no production, and, therefore, death for both.
>
> v. Again, Able can produce a surplus, but now, more realistically, he can vary its size, so that Able and Infirm will bargain not only, as in (iv), over who gets how much, but also over how much will be produced. (Cohen 1995, 95)

Cohen (1995, 96) acknowledges that Able and Infirm may differ in their preferences for leisure or labor (which he rather oddly characterizes as "the disutility of labour for Able and the disutility of infirmity for Infirm"),[11] and that this asymmetry may be a factor in the bargaining process, presumably allowing divergences from complete equality of product. Such differences in preferences, Cohen asserts, are unrelated to abilities. Thus, "the crucial point is that Able's talent will not, just as such, affect how much he gets. If the exercise of his talent is irksome to him, then he will indeed get additional compensation, but only because he is irked, not because it is his labour which irks him" (ibid.).

Cohen thus tries to establish that under conditions of joint ownership of assets, the more productive would never receive a share of output proportional to productivity or otherwise unequal to purely egalitarian division, i.e., simple division of the total product by the number of joint owners. If Able works 10 hours and picks 100 bushels of apples and Infirm works 3 hours and picks 10 bushels of apples, their mutual rationality demands that at the end of the day Able will receive 55 bushels and Infirm will receive 55 bushels. Perhaps because this is so wildly implausible, Cohen tries to suggest a reason why Able might get more than 55 bushels after all, to wit, that picking apples is unpleasant (it "irks" her). This may be the strangest part of Cohen's exposition and simply heaps confusion on confusion, as he tries to make a distinction without a difference. Cohen conjures up the distinction between one's abilities and one's preferences in order to justify, on the basis of pure rationality, divergences from strict egalitarianism. In effect, he argues that if joint owners were to agree to unequal division, it could only be because of different preferences for leisure (the irksomeness of labor) and never because of unequal talents or abilities.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Thus, Cohen (1995, 96) states that "if the exercise of [Able's] talent is irksome to him, then he will indeed get additional compensation, but only because he is irked, not because it is his labour which irks him." But there is no meaningful sense to the term "additional" here, since the questions are what amount of product will be produced and the ratio at which it will be shared between Able and Infirm. Infirm may be able to demand a price for her consent to the use of the jointly owned assets, but whether she will be successful in doing so and how much she will get depend on her bargaining abilities. Given that in Cohen's model leisure and labor are directly convertible, at least above the mutual subsistence baseline, an irksome *decrease* of leisure is precisely convertible into an irksome *increase* of labor, so if Able is irked, it *must* be because of the irksomeness of labor.[12] Cohen's distinction between labor and the irksomeness of labor is both confusing and confused. It fails to make his argument any more plausible.

Cohen also assumes that the outcome will be in the form of a percentage share and argues that a 50/50 split is the only rational outcome. A percentage split in the case of Able and Infirm would be unlikely in scenario v, in any case, since, for any percentage split (40/60, 50/50, or whatever) of output and any quantity of labor input, a lump-sum distribution to Infirm would be preferable from both Infirm's and Able's perspectives. Consider the case of Cohen's preferred 50/50 split at the expenditure of Able's labor that produces 100 units of product. Infirm and Able will each receive 50 units, meaning that Able faces a 50 percent average tax rate and a 50 percent marginal tax rate. By accepting a lump-sum payment of 50 units plus 1, Infirm is made better off and Able's marginal tax rate over 51 units is reduced to zero, which, if he has a normally shaped supply curve for labor, will generate a larger expenditure of labor. Thus, both Able and Infirm would be better off by substituting a lump-sum payment to Infirm for her agreement to allow Able to labor on the jointly owned resources; hence, Cohen's insistence on a 50/50 split of output, regardless of the amount of output, is not to the advantage of either party. Cohen's argument for a strictly egalitarian (50/50) distribution of income fails even at the level of insisting that a percentage of final product is rationally preferable to a lump-sum payment.

I now turn to the most serious confusion in Cohen's convoluted argument. The fact that Infirm has a full veto power over Able's ef-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

forts entails, according to Cohen, that the distribution of the product will not be influenced by Able's greater ability. Able

> gets nothing extra just because it is he, and not Infirm, who does the producing. Infirm controls one necessary condition of production (relaxing his veto over use of the land), and Able controls two, but that gives Able no bargaining advantage. If a good costs $101, and you have one hundred of the dollars and I only have one of them, then, if we are both rational and self-interested, you will not get a greater share of the good if we buy it jointly just because you supply so much more of what is required to obtain it. (Cohen 1995, 96)

This claim is based on a confusion, however, as it assumes that "*a* good costs $101" (my italics), i.e., that there is no variability in the ratio of inputs and outputs. (For $101 you get the minimal amount of the good, but for $100 you get none, and for $102 you get no more.) Cohen is here confusing cases iii and iv with case v, which is the more normal and certainly the most interesting case. Cohen has stipulated in cases iii and iv that Able cannot decide to produce more or less, so the total product to be divided is rigidly fixed.

Both of these scenarios are radically different from the situation described by case v, for in this (most realistic) case the input of labor is variable, so there is not "*a* good" costing a fixed amount, as there is in cases iii (where the maximum possible product is the minimum necessary to sustain both Able and Infirm) or iv (where the only possible output is greater than the minimum necessary to sustain both Able and Infirm, but variation of neither input nor output is possible). In case v, both factor input and product are variable. Able has the option of varying her expenditure of labor in return for varying product; if the $100 were to represent the amount of labor necessary to sustain both Able and Infirm, and the $1 were the relaxing of Infirm's veto over Able's activities, then the interesting question is what would happen to the increased production made possible by Able's additional investments of $5, $30, $68.43, etc., since Infirm has nothing other than the magical $1 (necessary to make production possible) to contribute. All that we can say with certainty is that, given Cohen's assumptions, Infirm will receive at least the minimum necessary to sustain her, as she would not, under any circumstances, agree to less; above that it is a matter of bargaining. *Pace* Cohen, there is no reason to insist that *any* increased production over the input of Able's $100 and Infirm's $1 would be shared equally. The distribution de-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pends not only on Able's preferences for leisure over labor, but also on the expectations of the parties, and this involvement of expectations by itself entails a radical indeterminacy of result, for, as Thomas Schelling (1960, 21) points out, such situations "ultimately involve an element of pure bargaining—bargaining in which each party is guided mainly by his expectations of what the other will accept. But with each guided by expectations and knowing that the other is too, expectations become compounded."

In a case of the sort that Cohen describes, in bargaining over a surplus the bargainer who can precommit credibly will get the share she prefers, so long as the other party has not precommitted simultaneously.[13] What Cohen's remarks tell us is that G. A. Cohen has committed himself, through the vehicle of his published writings, to a certain strategy (fully equal division) in the sorts of cases that he describes (as it would, presumably, entail a loss of face or of academic reputation if he were to practice other than he preaches). Anyone who finds herself in a pure bargaining situation with G. A. Cohen may expect that the only viable move will be to demand one-half of whatever is at stake—no more and no less—which is the complementary equilibrium strategy to an irrevocably committed strategy of demanding one half.[14] But that strategy may not work with bargainers other than G. A. Cohen. Strict egalitarianism is not the uniquely rational bargaining strategy that Cohen claims it is.

Cohen believes that his example of the $100 and the $1 necessary jointly to purchase a good proves that "there will be no . . . inequality, or its source will not be Able's ownership of his own powers, but the influence of the parties' utility functions on the outcome of the bargaining process." This conclusion has not, however, been supported by Cohen's arguments.

Cohen proceeds to consider what he calls "a relatively minor objection to the argument" which is, however, fatal to Cohen's claim that "self-ownership" conjoined with joint ownership of everything else will necessarily result in equal income.

The objection is that an owner of a factor of production could threaten to destroy the factor or, what amounts to the same thing (all relevant effects being relative here), to allow it to decay in value or to fail to augment its productivity. Able, in the cases considered above (iv and v), "has it in his power to let (part of) his talent decay" (Cohen 1995, 97). However, according to Cohen (ibid., 97), "What is unclear, because of difficulties in the concept of rationality, is whether

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

such a Schellingian threat would be credible, and, therefore, effective, *under the assumption that everyone is rational.* If it would be, then those with greater power to produce could get more in a jointly owned world for reasons which go beyond the consideration that their labour might be irksome to them" (emphasis orginal). (In an earlier published version of the essay Cohen [1986, 82] had written, "What I do not know how to assess, because of my uncertain grasp of bargaining theory, is whether such a Schellingian threat would be credible. . . .")

Cohen (1995, 97) dismisses this objection as "minor" because "it achieves purchase only in the rather peculiar case in which Able can indeed diminish his own productive power." Cohen implies that Able would threaten to diminish her own present powers, perhaps by cutting off her feet or blinding herself; and Cohen seems to believe that such a strategy may be less than credible. But let us look at the cases Cohen describes in which such a threat might be made. Such a strategy would be pointless in cases i and ii, and would not be credible in case iii, since the maximum product is stipulated to be only enough to sustain Able and Infirm, with no surplus available for bargaining, so that the outcome is clear: Infirm will insist that Able work and produce the maximum possible, which is precisely enough to sustain them both (regardless of whether it is distributed equally), but no surplus is available for distribution above survival level. Such a strategy may or may not be credible in case iv, in which labor inputs cannot vary but there is a surplus available for distribution; the credibility is entirely a matter of Able's ability to commit herself and to convince Infirm that she will abide by the threat, which may be difficult to do in the absence of a third party with whom to contract for enforcement, or some other way to limit Able's post-agreement options. (It bears noting that Infirm could also precommit to demanding one-half, or a greater-than-one-half share, as well; nothing in case iv stops Infirm from precommitting to exercise her veto in order to extract a greater-than-equal share of the surplus potentially available for bargaining.) But Cohen cannot conclude from the unavailability of such a strategy in case iii, and the questionable credibility of such a strategy in case iv, that it is not credible in the much-more-realistic scenario of case v, in which labor inputs can vary over the amount necessary to ensure that both Able and Infirm are sustained and that a correspondingly variable surplus can be generated by Able's labor; all that Able has to do in case v is exercise her claim rights and liberty rights *not to work*, i.e., to withdraw her labor from the productive process.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Given the disutility of labor that Cohen presupposes, i.e., that each unit of disvalued labor can be converted into a unit of valued leisure, and the fact that only Able has the power and the right to decline to work, Able's threatened refusal to work is a highly credible strategy, indeed. Thus, it is *not* incredible that Able would refuse to work beyond the labor necessary for both Able and Infirm to subsist without being compensated in accordance with, say, her marginal product.

To clarify matters further, we can distinguish two cases. In the first, one allows one's ability to decay by eliminating one's own options. (Burning one's bridges can increase one's bargaining power, and such moves are neither irrational nor otherwise objectionable; they are quite common to bargaining situations.) In the second case, on which I have focused, one simply withdraws one's labor, but without diminishing one's productive capacity or otherwise limiting one's options. Either is a credible strategy, although the latter is certainly more commonly observed. It is precisely the strategy of "going on strike" that Cohen (1995, 250) condemns—consistently for a socialist "saddened" by what looked, at the time Cohen wrote one of the essays in the book, "to be the impending final abandonment of the Bolshevik experiment." Strikes, after all, were not allowed in the Soviet Union. In response to the libertarian challenge, Cohen seeks to root out of socialist theory the idea that one has a right to property in one's person, in one's labor, or in one's product.

## *The Reality of Socialist Practice*

Cohen writes as if his experiment has never in fact been carried out in practice and that we have only his a priori speculation as the basis for thinking rationally about the joint-ownership scenario that he describes. But there is ample experience of joint ownership being imposed on people, and it does not bear out Cohen's conclusions in any way. The English colony at Jamestown offers a clear example of what happens when joint ownership is imposed on those living on land that was "good and fruitfull." As one eyewitness wrote:

> So great was our famine, that a Savage we slew and buried, the poorer sorte tooke him up againe and eat him; and so did divers one another boyled and stewed with roots and herbs. It were too vile to say, and scarce to be beleeved, what we endured: but the occasion was our

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> own, for want of providence, industrie and government, and not the barrennesse and defect of the Country, as is generally supposed. (In Bethell 1998, 34)

Sir Thomas Dale, upon his arrival in Virginia in May of 1611, noted that the colonists were bowling in the streets rather than working. It was the introduction of several property that put an end to the "starving time" that resulted from joint ownership of assets and egalitarian distribution of the joint product.

Cohen's experiment was also tried at Plymouth Colony a few years later. As Governor William Bradford noted:

> The experience that was had in this common course and condition, tried sundry years and that among godly and sober men, may well evince the vanity of that conceit of Plato's and other ancients applauded by some of later times: that the taking away of property and bringing in community into a commonwealth would make them happy and flourishing; as if they were wiser than God. For this community (so far as it was) was found to breed much confusion and discontent and retard much employment that would have been to their benefit and comfort. For the young men, that were most fit and able for labour and service, did repine that they should spend their time and strength to work for other men's wives and children without any recompense. The strong, or man of parts, had no more in division of victuals and clothes than he that was weak and not able to do a quarter the other could; this was thought injustice. The aged and graver men to be ranked and equalized in labours and victuals, clothes, etc., with the meaner and younger sort, thought it some indignity and disrespect unto them. And for men's wives to be commanded to do service for other men, as dressing their meat, washing their clothes, etc., they deemed it a kind of slavery, neither could many husbands well brook it. Upon the point all being to have alike, and all to do alike, they thought themselves in the like condition, and one as good as another; and so, if it did not cut off those relations that God hath set among men, yet it did at least much diminish and take off the mutual respects that should have been preserved amongst them. And would have been worse if they had been men of another condition. Let none object this is men's corruption, and nothing to the course itself. I answer, seeing all men have this corruption in them, God in His wisdom saw another course fitter for them. (In Bethell 1998, 41)

When Cohen's thought experiment has been run in reality, it turns out that Able ("the strong, or man of parts") does *not* agree to work

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

hard and then share equally with Infirm ("he that was weak and not able to do a quarter the other could"), but simply refuses to work, resulting in starvation for all.

The extreme egalitarian typically blames the moral failings of the parties involved, rather than the abolition or attenuation of several property for the failures of such collectivist schemes. Thus, Cohen (1995a, 396) has criticized the reliance on incentives, in the form of the possibility of unequal holdings or unequal division, with which Rawls amends purely equal division of assets and income, on the grounds that it effectively institutionalizes immorality:

> My principal contention about Rawls is that (potential) high fliers would forgo incentives properly so-called in a full compliance society governed by the difference principle and characterized by fraternity and universal dignity. I have not rejected the difference principle in its lax reading as a principle of public policy: I do not doubt that there are contexts where it is right to apply it. What I have questioned is its description as a principle of (basic) justice, and I have deplored Rawls's willingness to describe those at the top end of a society governed by it as undergoing the fullest possible realization of their moral natures.

Recall, however, Governor Bradford's observation that joint ownership and enforced equal division failed miserably "amongst godly and sober men" and "would have been worse if they had been men of another condition." To what, then, are we to attribute the fact that such schemes result, not in harmony and prosperity, but in famine and cannibalism? Who or what bears the blame? The question was never put more directly than by Vasily Grossman (1986, 164), a witness to the imposition of joint ownership on the peasant farmers in Ukraine:

> Some went insane. They never did become completely still. One could tell from their eyes—because their eyes shone. These were the people who cut up and cooked corpses, who killed their own children and ate them. In them the beast rose to the top as the human being died. I saw one. She had been brought to the district center under convoy. Her face was human, but her eyes were those of a wolf. These are cannibals, they said, and must all be shot. But they themselves, who drove the mother to the madness of eating her own children, are evidently not guilty at all! For that matter, can you really find anyone who is guilty? Just go and ask, and they will all tell you that they did it for the sake of virtue, for everybody's good. That's why they drove mothers to cannibalism!

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

It would require too long a digression to offer a full critique of what is wrong with blaming the victims of communism for failing to live up to its "high" moral standards. I will merely suggest an hypothesis that seems simpler and more straightforward than the claim that human beings have not yet proven good enough for socialism: socialism is not good enough for human beings.

Cohen errs in thinking that rational parties would never refuse to work or bargain or allow their abilities to decay if they were not compensated unequally. He simply dismisses the possibility: "No libertarian would want to defeat the Able/Infirm argument (for the consistency of equality and self-ownership) on so adventitious a basis" (Cohen 1995, 97). According to Cohen (ibid., 97–98), the libertarian "would want, instead, to overcome it by pressing . . . [a] more fundamental objection . . . that to affirm joint ownership of the world is, as the story of Able and Infirm might be thought to show, inconsistent with achieving the purpose and expected effect of self-ownership." But Cohen's hypothetical opponent need not choose on which basis to refute Cohen's arguments, for the Able/Infirm story does not show what Cohen claims that it shows. Cohen has not demonstrated that joint owners would not or should not agree to division of their assets; nor that the distribution of a surplus over what is necessary to sustain both Able and Infirm must be evenly divided; nor that Able could not bargain for a greater share on the basis of a threat to diminish her productivity or her productive effort. Finally, real-world experience with joint ownership contradicts Cohen's rosy egalitarian description and raises the issue of why joint ownership should ever be seriously considered in the first place.

### *Positive vs. Negative Community*

Cohen's conclusions are frequently repeated, but his arguments are rarely read. Those arguments fail to show that property in one's person is irrelevant to the distribution of wealth and income, even accepting their underlying assumptions.

Cohen does direct our attention, perhaps contrary to his intentions, to the question of why joint ownership should be assumed in the first place. No argument is given as to why such assets should be assumed, even for the sake of argument, to be jointly owned; they

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

may be, but why must or should they be? Classical liberals and libertarians are open on the question of whether particular bits of land or other resources should be considered jointly or individually owned.[15] What is unargued for by Cohen (aside from asserting that it is "intuitively relevant"), but is of dubious plausibility, is the idea that every resource other than our own persons should be considered the joint property of all human beings, or perhaps of all rational agents. If rational agents were to be discovered on Mars, would the joint owners of Earth be required to obtain the permission of every rational Martian before any terrestrial resource might be used, and would the agreement have to be unanimous across species? This would be a strange basis on which to build a theory of jurisdiction over scarce resources. As almost all previous writers on property have emphasized, requiring the permission of everyone before anyone could pick an apple would result in the extinction of humanity. Joint ownership requiring unanimous approval to every act of transformation of resources is ultimately rejected by Cohen, on the ground that it interferes with any reasonable sense of autonomy, but it is not clear why it should even be entertained in the first place.

There may be good reasons to believe that very early in its actual history, property took one of various forms of positive community, principally familial, as Fustel de Coulanges (1864), Maine (1888), and other anthropologists and historians of property have shown; but that is not Cohen's argument. Nor are the forms of positive community described by legal historians consistent with the egalitarian ownership described by Cohen as "joint ownership," for they did not encompass all humans or all rational agents, but were always forms of community that established rights against all nonmembers of the owning communities. As Locke noted of common property, "And though it be common, in respect of some Men, it is not so to all Mankind, but is the joint property of this Country, or this Parish" (*Two Treatises*, II.35). In this respect, "negative community," i.e., the idea that all have a right to appropriate unowned objects, is a far more egalitarian starting point than any form of "positive community," which in every form ever observed was a nonuniversal, group-limited right. This issue was carefully considered by the modern natural-law writers on property, who distinguished between negative community and positive community, the latter corresponding to the joint ownership that Cohen proposes as the proper baseline.[16]

It is remarkable that figures such as Cohen persistently overlook

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the distinction between negative and positive community when considering claims, by Locke and other writers on several property, that, prior to appropriation, the world was open to mankind in common. As Pufendorf (1994, 178) noted quite explicitly,

> It is plain that before all human agreements there was a communion of all things. Not a positive communion, of course, but a negative one; that is, all things were available to all and belonged no more to one person than to another. But since things are not useful to men unless at least their fruits are laid hold of, and indeed, since this is done in vain if others are in turn allowed to seize what we have already actively intended for our own use, the first agreement among mortals concerning things is understood to have been this: Whatever anyone had taken for himself from the common stock or its fruits, with the intention of using it for himself, would not be seized from him by another.

Cohen reproduces the argument against liberal property put forth by Sir Robert Filmer (1991, 234), an apologist for royal absolutism:

> Certainly it is a rare felicity that all the men in the world at one instant of time should agree together in one mind to change the natural community of things into private dominion. For without such an unanimous consent it was not possible for community to be altered. For if but one man in the world had dissented, the alteration had been unjust, because that man by the law of nature had a right to the common use of all things in the world, so that to have given a property of any one thing to any other had been to have robbed him of his right to the common use of all things.

Locke, who was replying to Filmer, rejected joint ownership of this sort (in which each joint owner has a veto right, requiring unanimity for anything to be appropriated and consumed) as a baseline: "If such a consent as that was necessary, Mankind had starved, notwithstanding the Plenty God had given him" (*Two Treatises*, II.28). By asserting property in one's person, Locke managed to avoid the trap set by Filmer, for

> Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. (Ibid., II.27)[17]

It is property in one's person that justifies the appropriation of that to which everyone earlier had a right. Cohen's attempted rebuttal does not shake this connection; Cohen's case against libertarianism rests on basic errors of reasoning and fails on its own terms.

There are certainly many observable scenarios in which one or another form of joint ownership is highly desirable, such as partnerships, co-ops, various sorts of clubs and religious institutions, and marriages, but there is no reason to posit that joint ownership is the only rational or desirable arrangement, nor that property in severalty is irrational or immoral. Nor does Cohen even offer any good reason as to why joint ownership should be seriously entertained at all; the *only* justification that Cohen offers for attempting to work through the logic of joint ownership is that joint ownership is "intuitively plausible." To say that one's intuition tells one that a claim is reasonable or probable is hardly to offer an *argument* on its behalf; and, in any case, "joint ownership" or "positive community" has certainly been considered by defenders of several property and decisively rejected for very good *reasons*, as opposed to mere intuition. Finally, Cohen has failed to demonstrate that the unequal division of joint products is irrational (much less that it is immoral).

The central pillars of Cohen's polemic against conjoining property in one's person with several property rest on errors of reasoning; his argument against the conjunction of property in one's person with several property will have to proceed without his often-cited but erroneous claims about the bargaining situation of self-owners who own the world jointly. His bare assertion of the "plausibility" of positive community is not an argument for a policy that has been rejected for clear and compelling reasons by many other writers on the topic.

It may be that libertarian claims about the conjunction of property in one's person and property in the world are false, but, if so, it is not for the reasons that Cohen has advanced.

## NOTES

1. Cohen's criticisms have appeared in numerous forms and publications, notably Cohen 1985, Cohen 1986a, Cohen 1986b, and Cohen 1989, and have been revised and collected together in Cohen 1995.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

2. Other recent works that have cited without criticism or have incorporated at least some of Cohen's basic claims into their critique of several property include Waldron 1988, Munzer 1990, Ingram 1994, Haworth 1994, Christman 1994a and 1994b, and Sreenivasan 1995. Cohen's approach has been criticized by David Gordon (1990) and by Jan Narveson (1990), although without raising the problems I point out in this critique. Unlike the criticisms of Gordon and Narveson, my refutation of Cohen's central arguments is immanent.
3. Part of Weinberg's claim is that Cohen's critique of libertarian views on liberty is a decisive refutation of libertarians' claims to be defenders of freedom. I deal with that issue in my separate reply to Friedman in this issue of *Critical Review,* in response to his claim that "one stipulative definition is as good as another" (Friedman 1997, 432), so I will instead focus my criticism here on Cohen's critique of "self-ownership," which Weinberg (1997, 324) considers to be, if anything, "too sympathetic an analysis of libertarian concepts." Weinberg cites in support of this claim a particularly outlandish attack on Cohen by Brian Barry for even bothering to address classical liberalism at all. (See Barry 1996 and Cohen's response [1996].)
4. Cohen quite oddly proceeds to define each person's property in herself in terms of its very negation, viz., "According to the thesis of self-ownership, each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way that a slaveholder is entitled, legally speaking, to dispose over his slave" (68). This is a strange way of understanding "self-ownership," one that would not generally be endorsed by defenders of property in one's person, but which has been taken up as paradigmatic by many who have recently followed in Cohen's footsteps. The possibility of the inalienability of certain rights is a clear case in which the (illegitimate) property claimed by a slaveholder in her slaves is misleading, rather than illuminating, as a paradigm of property in one's person. Although misleading in other respects, the definition need not be disputed to show that Cohen's conclusions do not follow from his premises.
5. See for a correction Gordon 1990, 78–80. Gordon (1990, 83) also takes Cohen to task for "seizing on the exact words while ignoring their sense" in misunderstanding Nozick's point concerning *re*distribution of wealth gained under a determinate system of rights–namely, that "things come into the world already attached to people having entitlements over them" (Nozick 1974, 160)–as a claim about *initial* appropriation.
6. Cohen is demanding, in effect, that it be shown not merely that appropriation may be *permissible,* but that it must be *optimal* as well. See the discussion of the two kinds of justification in Simmons 1994.
7. It is worth noting that even "indivisible" goods can be divided on the basis of agreement, and quite commonly are. H. Peyton Young describes "eight

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

fairly universal techniques for defining ex ante property rights in an indivisible good" (Young 1996, 373).

8. See, for example, Steiner 1994, especially the epilogue on just redistributions.
9. It is worth pointing out that, in many actual cases, joint-ownership arrangements have generated voluntary divisions of land (as also of other resources), and Cohen offers no evidence that the joint owners who have agreed to division were suffering from irrational delusions. For some of the relevant literature and case studies, see Ellickson 1993, especially 1388–92, and Libecap 1989. For a historical study of voluntary division of jointly held common property, see Norberg 1988. Norberg (1988, 268) notes, of popular votes on division of common lands in Revolutionary France, that "whether the peasants voted for or against partition, they generally did so by very large margins, often unanimously." Of communities with commons, 71.95 percent voted for partition in the 1793 referenda (ibid., 271).
10. The conditions under which such arrangements prove mutually beneficial are set out and used to illuminate case studies in Lueck 1993.
11. It is not clear how Infirm's infirmity can be a source of disutility for her in the way that Able's labor is a source of disutility for her, as Infirm cannot, by hypothesis, vary her infirmity in the way that Able can vary her labor effort. Whether it was Cohen's intention or not, such remarks color the situation he describes by engaging natural feelings of sympathy for the unfortunate, thereby introducing elements that are not explicitly acknowledged in the description of the bargaining situation. Such feelings of sympathy are also brought to the fore by the specification of the bargaining situation as one of two persons dealing with one another face to face, and therefore probably on an intimate, and not on an anonymous, basis, rather than the situation of anonymous interaction among strangers who do not meet each other face to face. Thus, although Cohen (1995, 95) stipulates that Able and Infirm are "rational, self-interested, and mutually disinterested," the situation he describes is not the sort in which such motivations are common, and his description evokes sentiments that are common to small-group, face-to-face, and intimate settings. The importance of distinguishing between the two kinds of settings has been highlighted by F. A. Hayek (1988, 18), who points out that "the structures of the extended order are made up not only of individuals but also of many, often overlapping, sub-orders within which old instinctual responses, such as solidarity and altruism, continue to retain some importance by assisting voluntary collaboration, even though they are incapable, by themselves, of creating a basis for the extended order. Part of our present difficulty is that we must constantly adjust our lives, our thoughts and our emotions, in order to live simultaneously within different kinds of orders according to different rules. . . . So we must learn to live in two sorts of worlds at once."
12. A nail is driven into the "preference vs. productivity" coffin by Alexander Rosenberg (1988, 15), who notes that "the economic effects of a talent or a disability may be exactly the same as those of a preference or taste," using the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

example of acrophobia or acrophilia and the talent for tree climbing among coconut harvesters; the preference for high places would generate an economic "rent" (or profit) indistinguishable from the "rent" or profit generated by a talent for climbing, and thus preferences and talents are difficult, if not impossible, to distinguish.

13. The party who can make an "irrevocable commitment" will be able to "squeeze the range of indeterminacy down to the point most favorable to him" (Schelling 1960, 24).
14. For a treatment of complementary strategies, see Sugden 1986, 67–69.
15. For an informed discussion of the variety of land regimes possible and consistent with classical liberal views, see Ellickson 1993.
16. The issue is usefully canvassed in Buckle 1991, especially 36, 93, 104–5, 164–67, and 183–87. See also the careful discussion of the issue in Pufendorf 1994, especially 176–85.
17. Alan Ryan (1994) criticizes the notion of "property in one's person," but he does not consider the advantages to the concept of "property in" objects. Contemporary imprecise English usage identifies property and object; thus, I might say that "this land [watch, book, etc.] *is* my property." The older usage of speaking of having "a property in a thing" is far more precise and reflects the complex multiplicity of property arrangements that are possible and that are fully compatible with the libertarian defense of several property. Thus, it may be that each of many different persons has "a property" in a piece of land; one has the right to live on it, another has the right to walk across it, yet another has the right to the rental income from it, and so on. As the Roman lawyers and the modern law-and-economics scholars realize, "ownership" normally represents a bundle of such rights. Presenting the rights that one has over oneself (not to be raped, not to be killed, not to be beaten, to express one's opinions, to consent to one's marriage, and other bourgeois indulgences) as property in one's person allows the legal system to rest on a coherent and integrated foundation. The transition from the classical formulation ("person X has a property in object Y") to the modern and less precise formulation ("object Y is X's property") has made legal discussion less clear and has led—in the attempt to focus attention on the right rather than the object—to the formation of such concepts as "property rights," which means "right rights." James Madison (1983, 266) made a valiant attempt to retain the precision of the classical formulation, and to relate the rights to freedom of speech and religion to the rights to dominion over land and other objects, in his essay "Property":

> This term in its particular application means 'that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.' In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.* In the former sense, a man's land, or merchandise, or money is called his property. In the latter sense, a man has a property in his opinions and the free com-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> munication of them. He has a property of particular value in his religious opinions, and in the profession and practice dictated by them. He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

## REFERENCES


Barry, Brian. 1996. "You have to be crazy to believe it." *Times Literary Supplement*, October 25.

Bethell, Tom. 1998. *The Noblest Triumph: Property and Prosperity Through the Ages*. New York: St. Martin's Press.

Buckle, Stephen. 1991. *Natural Law and the Theory of Property*. Oxford: Clarendon Press.

Christman, John. 1994a. "Distributive Justice and the Complex Structure of Ownership." *Philosophy and Public Affairs* 23: 225–50.

Christman, John. 1994b. *The Myth of Property: Toward an Egalitarian Theory of Ownership*. Oxford: Oxford University Press.

Cohen, G. A. 1985. "Nozick on Appropriation." *New Left Review* no. 150: 89–105.

Cohen, G. A. 1986a. "Self-Ownership, World-Ownership, and Equality." In *Justice and Equality Here and Now*, ed. Frank S. Lucash. Ithaca: Cornell University Press.

Cohen, G. A. 1986b. "Self-Ownership, World Ownership, and Equality: Part II." *Social Philosophy & Policy* 3(2): 77–96.

Cohen, G. A. 1989. "Are Freedom and Equality Compatible?" In *Alternatives to Capitalism*, ed. Jon Elster and Karl Ove Moene. Cambridge: Cambridge University Press.

Cohen, G. A. 1995a. "Incentives, Inequality, and Community." In *Equal Freedom: Selected Tanner Lectures on Human Values*, ed. Stephen Darwall. Ann Arbor: University of Michigan Press.

Cohen, G. A. 1995b. *Self-ownership, Freedom, and Equality*. Cambridge: Cambridge University Press.

Cohen, G. A. 1996. "Self-ownership and the libertarian challenge." *Times Literary Supplement*, November 8.

de Coulanges, Numa Denis Fustel. [1864] 1956. *The Ancient City: A Study on the Religion, Laws, and Institutions of Greece and Rome*. Garden City, N.Y.: Doubleday Anchor.

Ellickson, Robert C. 1993. "Property in Land." *Yale Law Journal* 102: 1315–1440.

Filmer, Sir Robert. 1991. "Observations Concerning the Originall of Government, upon Mr. Hobs 'Leviathan,' Mr. Milton against Salmasius, H. Grotius 'De Jure Belli'." In idem, *Patriarcha and Other Writings*, ed. Johann P. Sommerville. Cambridge: Cambridge University Press.


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Friedman, Jeffrey. 1997. "What's Wrong with Libertarianism." *Critical Review* 11(3): 407–67.

Gordon, David. 1990. *Resurrecting Marx: The Analytical Marxists on Freedom, Exploitation, and Justice.* New Brunswick, N.J.: Transaction Books.

Grossman, Vassily. 1986. *Forever Flowing.* New York: Harper & Row.

Haworth, Alan. 1994. *Anti-libertarianism: Markets, Philosophy and Myth.* London: Routledge.

Hayek, F. A. 1988. *The Fatal Conceit: The Errors of Socialism*, ed. W. W. Bartley, III. London: Routledge.

Ingram, Attracta. 1994. *A Political Theory of Rights.* Oxford: Oxford University Press.

Kymlicka, Will. 1990. *Contemporary Political Philosophy: An Introduction.* Oxford: Clarendon Press.

Libecap, Gary D. 1989. "Distributional Issues in Contracting for Property Rights." *Journal of Institutional and Theoretical Economics* 145: 6–24.

Lueck, Dean. 1993. "Contracting into the Commons." In *The Political Economy of Customs and Culture: Informal Solutions to the Commons Problem*, ed. Terry L. Anderson and Randy T. Simmons. Lanham, Md.: Rowman & Littlefield.

Madison, James. 1983. "Property." In *The Papers of James Madison*, vol. 14: *6 April 1791–16 March 1793.* Charlottesville: University Press of Virginia.

Maine, Sir Henry Sumner. 1888. *Lectures on the Early History of Institutions.* New York: Henry Holt.

Munzer, Stephen R. 1990. *A Theory of Property.* Cambridge: Cambridge University Press.

Narveson, Jan. 1990. *The Libertarian Idea.* Philadelphia: Temple University Press.

Norberg, Kathryn. 1988. "Dividing Up the Commons: Institutional Change in Rural France, 1789–1799." *Politics and Society* 16: 265–86.

Nozick, Robert. 1974. *Anarchy, State, and Utopia.* New York: Basic Books.

Pufendorf, Samuel. 1994. *The Political Writings of Samuel Pufendorf,* ed. Craig L. Carr. Oxford: Oxford University Press.

Rosenberg, Alexander. 1988. "The Political Philosophy of Biological Endowments." *Social Philosophy and Policy* 5 (1): 1–31.

Ryan, Alan. 1994. "Self-Ownership, Autonomy, and Property Rights." In *Property Rights*, ed. Ellen Frankel Paul, Fred D. Miller, and Jeffrey Paul. Cambridge: Cambridge University Press.

Schelling, Thomas. 1960. *The Strategy of Conflict.* Cambridge, Mass.: Harvard University Press.

Simmons, A. John. 1994. "Original-Acquisition Justifications of Property." In *Property Rights*, ed. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul. Cambridge: Cambridge University Press.

Sreenivasan, Gopal. 1995. *The Limits of Lockean Rights in Property.* Oxford: Oxford University Press.

Steiner, Hillel. 1994. *An Essay on Rights.* Oxford: Blackwell.

Sugden, Robert. 1986. *The Economics of Rights, Co-operation and Welfare.* Oxford: Basil Blackwell.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Waldron, Jeremy. 1988. *The Right to Private Property*. Oxford: Oxford University Press.

Weinberg, Justin. 1997. "Freedom, Self-Ownership, and Libertarian Philosophical Diaspora." *Critical Review* 11(3): 323–44.

Young, H. Peyton. 1996. "Dividing the Indivisible." In *Wise Choices: Decisions, Games, and Negotiations*, ed. Richard J. Zeckhauser, Ralph L. Keeney, and James K. Sebenius. Boston: Harvard Business School Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Now available in English:

**Luciano Pellicani**

***The Genesis of Capitalism and the Origins of Modernity***

translated by James G. Colbert

Widely acclaimed in Europe, Luciano Pellicani's classic work on the origins of capitalism is now finally available in English. Through a careful reconstruction of the historical trajectory of capitalism, Pellicani confronts not only the Marxist and the Weberian conventional wisdom about the historical preconditions for capitalist development, but most of the vast literature on the subject to demonstrate how political freedom rather than religious, climatic, geographical and other contributing factors was the essential precondition for capitalist development. This epoch-making phenomenon is examined in terms of the cultural context of Renaissance Europe and related to the concomitant development of modernity and its antinomies.

Beginning with the Reformation and Weber's mythological account of Calvinism, Pellicani painstakingly examines all the major explanations of the phenomenon to build an argument for an open society as the one most conducive to social, economic and political well-being. The appendix carefully examines the development of capitalism in Japan to indicate how such a Eurocentric model is applicable to other societies as well.

228 pages

Hardcover: $ 24
Paperback: $ 16

Telos Press Ltd.
431 E. 12th Street
New York, NY 10009
# 212-228-6479

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Lowell Gallaway and Richard Vedder*

# GOVERNMENT AND UNEMPLOYMENT: REPLY TO DE LONG

ABSTRACT: *De Long's criticisms of our explanation of unemployment patterns in the United States are empirically false. His assertion that we have the direction of causation reversed collapses in light of the lag between artificially high wages and unemployment. Nor are his claims about the nature of cyclical movements in productivity and real wages consistent with the data. Finally, his contention that the model we present does not work in the post-World War II era is, at best, misleading. The evidence shows with remarkable consistency that government attempts to prop up wages have caused twentieth-century increases in U.S. employment.*

The central premise of our *Out of Work: Unemployment and Government in Twentieth-Century America* is that variations in the level of unemployment in the United States can be traced to discoordination between the market price for labor (the money wage rate), the productivity of the labor input into the production process, and the prices of goods and services in the economy. The greater the level of money wage rates relative to the productivity of labor and the prices of the things being produced, the greater will be the unemployment of labor. Thus, in our view of the world, the level of money wage rates is central in the determination of the volume of employment in

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Lowell Gallaway and Richard Vedder, the Edwin L. and Ruth E. Kennedy Distinguished Professors of Economics, Ohio University, Athens, OH 45701, telephone (740) 593-2040, telefax (740) 593-0181, are the authors of *Out of Work: Government and Unemployment in Twentieth-Century America* (Holmes & Meier, 1993).



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

a market economy. To dispute this view, J. Bradford De Long ("It Doesn't Work," *Critical Review* 12, nos. 1–2) offers the perspectives of a number of economists, past and present, and a series of technical objections to our empirical evidence.

Premier among the dead personages De Long has called in to refute our position is John Maynard Keynes, that grey eminence who so successfully overturned the economic paradigms that dominated the years prior to the 1930s. The primary idea De Long adopts from Keynes is the notion that money wage rates are macroeconomic artifacts that, in themselves, have little effect on the determinants of aggregate levels of real output and employment.

Perhaps this was to be expected. The absence, at least to our knowledge, of a review of this sort had given us pause. Could it be that our work was not nearly as much a challenge to the conventional wisdom of the post-*General Theory* epoch as we thought? We welcome De Long's review, because in the intellectual world, it is better to be attacked than to be ignored; and because it provides us an opportunity to explore the Keynesian side of the unemployment controversy.

De Long observes that we do not arrive at what he regards as "the only sane answer" to the question of the link between wages and unemployment. De Long's criticisms of the answer we do reach can be summarized as follows:

(1) Our data are flawed.
(2) We have the direction of causation reversed.
(3) We ignore the evidence that real wages are not countercyclical.
(4) We don't realize that all business cycles are different.
(5) Our model simply doesn't work in the post-World War II period.

## *The Data Issues*

The data problems suggested by De Long are his most valid criticisms, although they are not nearly as important as he thinks. We contend that there is a positive relationship between what we call the *adjusted real wage rate* and the level of unemployment; the adjusted real wage being the money wage rate adjusted for movements in commodity prices and the productivity of labor. De Long sees several difficulties with this measure. For example, there is the possibility that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

during a downturn in the business cycle, low-wage workers lose their jobs in disproportionate numbers, artificially raising the overall money wage rate. Also, he points out that it is difficult to disentangle cyclical changes in the productivity of labor from changes in the long-term trend level of productivity. On this point, De Long invokes, in the same breath, the notion that labor is a quasi-fixed factor of production, and the claim that it enjoys increasing returns to scale, concluding that the average productivity of labor automatically moves upward as business conditions improve and downward as they worsen. We infer that he means that employers are reluctant to fire experienced workers during a business-cycle downturn because of the cost of hiring and training their replacements when business conditions improve.[1] This reluctance would have the effect of reducing the average productivity of labor during a cycle downturn and biasing the adjusted real wage rate upwards. And that, in turn, would raise the possibility that the correlation we find between high real wages and recessions is a mirage.

These are legitimate concerns. However, their quantitative impact appears to be negligible. First of all, the actual relationship between changes in productivity and the unemployment rate is not statistically significant.[2] Further, standard statistical causality tests lead to accepting the null hypothesis that movements in the productivity measure are not caused by variations in the unemployment rate.[3] These findings contradict Long's argument that unemployment over the course of a business cycle is inversely related to the average productivity of labor.

As to the alleged systematic positive bias in the money wage measure, the actual relationships are negative, and statistical causality tests indicate that movements in the unemployment rate do not cause changes in the money wage rate.[4]

One additional comment on De Long's argument is appropriate. To the extent that the data problems he raises exist, they would create biases in the relationship between unemployment and the adjusted real wage rate *only* in the current period. Thus, labor productivity and money wage rates would not be affected by the level of unemployment in subsequent periods. This is an important consideration. Our basic model is dominated by lagged variables. The unemployment rate in the current period is explained largely by the values of money wages, prices, and labor productivity in previous periods. Thus, the impact of possible data distortions such as those De Long suggests would be highly attenuated.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## *The Causation Question*

One of De Long's major complaints is that we confuse the direction of causation in the relationship between the adjusted real wage and the unemployment rate. That is to say that in De Long's view, changes in the level of unemployment alter wage rates, not the other way around. We respond to this in two ways, one intuitive and the other statistical.

Intuitively, the question of causality must be put in the context of the basic nature of our model. As we just pointed out, it has a very large number of lagged terms. Therefore, if De Long is correct, then the value of the adjusted real wage in a given year must be determined by the unemployment rate *as much as seven years in the future*, based on the results reported on p. 45 of *Out of Work*. This requires a remarkable leap of faith. Causation cannot run backward.

This judgment is borne out by a technical examination of causality patterns. That analysis, consisting of Granger pair-wise causality tests, indicates a consistent pattern of causality running from the adjusted real wage rate to the unemployment rate. A sample of the outcome of this investigation is provided in Table 1, which describes the Granger pair-wise causality tests for the full range of lags embodied in the quarterly version of our model from the first quarter of 1959 through the second quarter of 1996. The results are strongly consistent. Even if we set the criterion for statistical significance at the 1 percent level, in all cases the evidence confounds De Long's hypothesis that unemployment is not caused by the adjusted real wage. At the same time, at the 1 percent level, we accept the null hypothesis that the adjusted real wage is not caused by unemployment.

It could be argued that this test is too generalized. After all, De Long's claim is that in some cases causation goes one way, while in others it moves in the opposite direction. To give him the benefit of the doubt, we performed the Granger pair-wise causality test (with one lag) for five different sub-periods that represent broad cycles in unemployment.[5] At the 1 percent level of significance, the result is that in none of the five periods is the adjusted real wage caused by unemployment. On the other side of the coin, in four of the cases unemployment is indeed caused by the adjusted real wage. Once more, the preponderance of the technical evidence definitively sup-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Table 1. Results of Granger Pairwise Causality Tests, Adjusted Real Wage (ARW) Versus Unemployment Rate (U)

| Lag | Null Hypothesis | Probability |
|---|---|---|
| 1 | ARW not caused by U | 0.0413 |
| | U not caused by ARW | 0.0000 |
| 2 | ARW not caused by U | 0.2915 |
| | U not caused by ARW | 0.0032 |
| 3 | ARW not caused by U | 0.1066 |
| | U not caused by ARW | 0.0043 |
| 4 | ARW not caused by U | 0.3962 |
| | U not caused by ARW | 0.0006 |
| 5 | ARW not caused by U | 0.5389 |
| | U not caused by ARW | 0.0024 |
| 6 | ARW not caused by U | 0.5136 |
| | U not caused by ARW | 0.0004 |
| 7 | ARW not caused by U | 0.7374 |
| | U not caused by ARW | 0.0031 |
| 8 | ARW not caused by U | 0.5925 |
| | U not caused by ARW | 0.0025 |

ports our perception of the relationship between unemployment and the adjusted real wage.

At the risk of belaboring this point excessively, we conducted one further test. De Long asserts that the Great Depression is a clear example of causation running from unemployment to the adjusted real wage. To explore this possibility, we used the unemployment rates shown on p. 77 of *Out of Work* and the adjusted real wage rate information on p. 84 to conduct a Granger pair-wise causation test covering the period beginning with the fourth quarter of 1929 and running through the first quarter of 1933. And contrary to De Long's conjecture, the adjusted real wage is *not* caused by unemployment.

## *The Cyclicality of Real Wages*

De Long makes much of the fact that real wages are not countercyclical, that is, they are not positively associated with unemployment

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in a significant fashion. In one of our data sets, this is true, but it hardly discredits our argument. Nowhere do we assert that real wages and unemployment are positively associated, come what may. What we do maintain is that high real wages *relative to the productivity of labor* are positively related to unemployment. To illustrate, in the annual data set, the simple correlation between the real wage and unemployment is −.055, clearly not significant. However, when one holds the level of productivity constant, the wage-to-unemployment correlation is positive and statistically significant (at the 0.1 percent level). And, in the case of the quarterly data, the simple correlation between unemployment and the real wage rate is a statistically significant 0.42, indicating that the real wage is countercyclical, contrary to De Long.

Finally, on this issue, we must once again point out the lagged variables that De Long overlooks. His emphasis is on the instantaneous relationship between unemployment and real wage rates, ignoring productivity movements. What that has to do with our model is beyond our comprehension.

### *All Business Cycles Are Different*

A fourth criticism offered by De Long is that all business cycles are different. If by that he means that their origins are different, we wholeheartedly agree. Some cycle downturns are triggered by price shocks, some by productivity shocks, some by wage shocks, and some by combinations of these factors. This emerges clearly from our narrative descriptions of individual business cycles. For example, the 1982 recession was initiated by a disinflationary price shock, as was the 1921 cycle downturn. However, the 1938 surge in unemployment stemmed from a positive money-wage shock. Finally, the most notorious of business cycles, the Great Depression, had its roots in a combination of negative price and productivity changes.

This is only a part of the story, though. While the origins of business cycles may vary widely, there is a common element among them: the manner in which the various shocks are transmitted to the economy. Our argument is that this transmission mechanism runs through labor markets, the places where entrepreneurial decisions are made regarding the hiring of a factor of production that accounts for about three-fourths of the cost of producing output.

De Long asserts that our model does not "work" in the post-World

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

War II period. For this to be true, we must be guilty of deliberately fabricating the numbers used to construct the graphics on pp. 35, 37, 185, 187, 189, 196, 205, 213, 214, 231, 235, and 239 of *Out of Work*. That would be decidedly unseemly behavior on our part and we deny it. The evidence he presents to support his assertion is a scatter diagram that is constructed by ignoring the nature of our basic model and the complex lag structure associated with it. De Long's diagram compares current levels of unemployment with current values of the adjusted real wage, not lagged values. In the process, he totally distorts our work.

Even worse, his numbers are obviously incorrect. In his scatter diagram, the adjusted real wage varies from slightly less than 80 percent [sic] to 100 percent [sic], meaning that the maximum value is slightly more than 25 percent larger than the minimum. We note, first of all, that the adjusted real wage is *not* a percentage. Properly constructed, it is an index number. Second, using the data we employed, the Bureau of Labor Statistics series for hourly compensation, output per hour, and the GNP (GDP) price deflator, the adjusted real wage rate varies from 96.24 to 104.14, a range of variation of about 8 percent. Consequently, any conclusions De Long draws from his data are decidedly suspect. We must admit that the source of his "data" is a mystery to us.

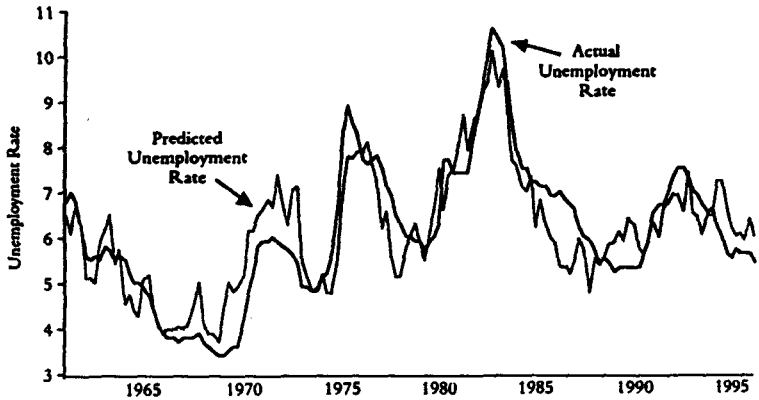
Since De Long has chosen to ignore the rather substantial evidence reported in *Out of Work*, we will repeat it here, in the form of two diagrams of our own. They graphically compare actual unemployment rates with the estimated rates derived from our statistical model. The data are the 1959–1996 quarterly information introduced earlier. Figure 1 portrays actual and estimated unemployment rates using a model that has no autoregressive adjustment terms—that is, no controls for the presence of autocorrelation in the statistical relationship. In Figure 2, the estimated values are obtained from an analysis that includes these terms.[6] The diagrams speak for themselves. Our model's explanatory power using post-World War II data is immense.[7]

## *The Appeal to Authority*

One last dimension of De Long's critique is a ritualistic appeal to authority, mainly that of Keynes. In fact, he encourages us to re-read

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Figure 1. Actual and Predicted Unemployment Rates, Model with No ARMA Adjustments, United States, First Quarter 1961 Through Second Quarter 1996




*Sources:* Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, Table A-5, Selected Unemployment Indicators, Seasonally Adjusted, http://146.142.4.24/cgi-bin/surveymost; and authors' calculations.

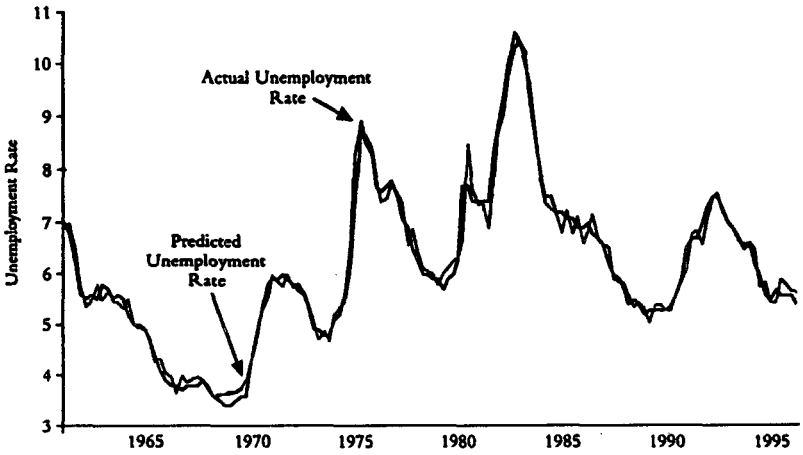
Keynes, implying that we are somehow ignorant of the prescience of his arguments. Although we have often re-read Keynes, we continue to believe that the *General Theory* does not get past p. 10 without collapsing in total ruin. It is on that page that Keynes, in an attempt to discredit the role of money wage-rate adjustment in the economy, asserts that

> in the case of changes in the general level of wages, it will be found, I think, that the change in real wages associated with a change in money wages, so far from being in the same direction, is almost always in the opposite direction. When money wages are rising, that is to say, it will be found that real wages are falling; and when money wages are falling, real wages are rising.

This empirical claim is controverted by data from the real world. For example, in our post-World War II quarterly data set, the simple correlation between money wages and real wages is a positive 0.90. But, decades before we came along, the deficiencies in Keynes's casual empiricism were noted. Its basic incorrectness was pointed out in the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Figure 2. Actual and Predicted Unemployment Rates, Model with ARMA Adjustments, United States, Second Quarter 1961 Through Second Quarter 1996




*Sources:* Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, Table A-5, Selected Unemployment Indicators, Seasonally Adjusted, http://146.142.4.24/cgi-bin/surveymost; and authors' calculations.

Keynes [1939]-Dunlop [1938]-Tarshis [1939] interchange in the *Economic Journal* in September 1938 and March 1939—works cited, albeit in a somewhat confused manner, by De Long.[8] It is worth noting that De Long treats Tarshis with the brief remark that he "contributed a short comment." Yet it was Tarshis's paper that made Lawrence Klein (1947, 107), for one, pause to consider the possibility that "Keynes was backing the wrong horse." (Unfortunately, Klein set aside his worries with the excuse that "our main concern is not with the empirical problem but with the theoretical relation of wage rates to unemployment.")

This empirical shortcoming in Keynes is critical to the notion of the "money illusion," that is, the idea that workers only care about money wage rates, not their real wage equivalent. Keynes's insistence on the futility of money wage adjustments to the economic shocks that generate business cycles is in many ways the cornerstone of his *Weltanschauung*. He launches a preemptive ad hominem attack on any

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

future critics of this notion with his remark [1936, 268] that "it can only be a foolish person who would prefer a flexible wage policy to a flexible money policy." Combine this with the opening sentence of the final chapter of the *General Theory* [1936, 372]—"The outstanding faults of the economic society in which we live are its failure to provide for full employment and its arbitrary and inequitable distribution of wealth and incomes"—and you have Keynes's moral agenda. It is on this foundation that he builds an economic model whose policy side mirrors the high-wage policies that led to the horrendous deepening of the Great Depression in America. John Maynard Keynes was simply Herbert Hoover with a pseudo-intellectual veneer.

It might be thought that our use of the term "pseudo-intellectual" is itself *ad hominem*. But the saddest dimension of the Keynesian episode has been its impact on the intellectual character of economics. What Keynes created was a model susceptible to trivial mathematical formalization in the hands of clever people. Such a model has satisfied a powerful yearning among many economists, the desire to emulate scientific disciplines such as physics.[9] However, in the process they have deviated from the best in physics and from true science. The willingness of Keynes, Klein, et al., to ignore the empirical failure of the model stands in stark contrast to, say, Albert Einstein's attitude toward such matters. Having devised the General Theory of Relativity in 1915, Einstein suggested three empirical tests that might refute it. In May 1919, the theory passed two tests, a result that was replicated in September 1922. Yet, even in the face of this supportive evidence, Einstein pointed out, with respect to the third test (the existence of the red shift) that "if it were proved that this effect does not exist in nature, then the whole theory would have to be abandoned."[10] Einstein's intellectual integrity in this regard prompted Karl Popper [1963, 34] to write, "Here was an attitude utterly different from the dogmatism of Marx, Freud, Adler, and even more so that of their followers." To that list, we would add Keynes and many of his followers, including, perhaps, De Long.

The historic record of the Keynesian model is not a distinguished one. It led to initial forecasts of dire unemployment in the immediate post-World War II world; it produced the intellectual catastrophe known as the Phillips Curve; it contributed to a new economic malaise, "stagflation," in the 1970s; and it was the foundation of Otto Eckstein's ill-fated concept of "core inflation." Yet, in the wake of successive disasters, ad hoc rationalizations of the Keynesian system

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

always seem to emerge. This record of intellectual failure is documented amply in *Out of Work*, and De Long's response to it constitutes merely another chapter in the ongoing saga.

NOTES

1. This is sometimes referred to as "labor hoarding."
2. The simple correlation coefficient between the percentage change in productivity and unemployment is –0.09 for the annual data (1900–1989) and 0.04 for the quarterly data covering the period starting with the first quarter of 1959 and running through the second quarter of 1996.
3. We use Granger pair-wise causation tests. For the annual sample, the probability associated with the null hypothesis is .2789. For just the period 1947–1989, it is .9983. For the quarterly data, it is .5875.
4. In the annual data set (1900–1989), the simple correlation between unemployment and the money-wage rate is a statistically significant –0.44, while the same measure using the quarterly data (1959.1 through 1996.2) is –0.04. As to the causality tests, Granger pair-wise causation tests show no causal link running from the unemployment rate to the money wage rate, contrary to De Long's claim.
5. The cycles examined are as follows: (1) first quarter 1960 through first quarter 1961; (2) first quarter 1969 through third quarter 1973; (3) third quarter 1973 through second quarter 1979; (4) second quarter 1979 through fourth quarter 1989; and (5) fourth quarter 1989 through second quarter 1996. Actually, the fourth of these includes two cycles, the brief one that peaks in mid-1991 and the longer one that embraces the bulk of the decade of the 1980s.
6. The ARMA adjustment scheme is of the (1,2) variety.
7. It should be noted that we have the advantage of the additional material reported in an updated edition of *Out of Work*, published in 1997. That version contains all the material included in the 1993 edition (with corrections for typographical errors) plus an additional chapter dealing with the 1990s and a substantial technical appendix that explores a variety of econometric issues surrounding our model.
8. A minor quibble: Dunlop's paper was not published in the March 1939 issue of the *Economic Journal*. Rather, it appeared in the September 1938 issue. De Long correctly cites the paper, but misstates its provenance in his text.
9. Our comments here are consistent with the arguments presented by Peter Boettke (1997).
10. This episode is described in Johnson 1991, 1–3. Einstein's statement is contained in a letter to astronomer Arthur Eddington.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

REFERENCES

Boettke, Peter. 1997. "Where Did Economics Go Wrong? Equilibrium as a Flight from Reality." *Critical Review* 11(1):11–64.

De Long, J. Bradford. 1998. "It Doesn't Work." *Critical Review* 12(1–2): 59–69.

Dunlop, John. 1938. "The Movement of Real and Money Wage Rates." *Economic Journal* 48: 413–34.

Johnson, Paul. 1991. *Modern Times*. New York: Harper Collins.

Keynes, John M. 1936. *The General Theory of Employment, Interest, and Money*. New York: Harcourt Brace.

Keynes, John M. 1939. "Relative Movements of Real Wages and Output." *Economic Journal* 49: 34–51.

Klein, Lawrence. 1947. *The Keynesian Revolution*. New York: Macmillan.

Popper, Karl R. 1963. *Conjectures and Refutations*. London: Routledge and Kegan Paul.

Tarshis, Lorie. 1939. "Changes in Real and Money Wages." *Economic Journal* 49: 150–54.

Vedder, Richard, and Lowell Gallaway. 1993. *Out of Work: Unemployment and Government in Twentieth Century America*. New York: Holmes and Meier.

Vedder, Richard, and Lowell Gallaway. 1997. *Out of Work: Unemployment and Government in Twentieth Century America* (updated edition). New York: New York University Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*J. Bradford De Long*

# UNEMPLOYMENT IN AMERICA: REJOINDER TO VEDDER AND GALLAWAY

ABSTRACT: *In their* Out of Work: Government and Unemployment in Twentieth Century America, *Richard Vedder and Lowell Gallaway contend that government intervention in American labor markets has caused unemployment by raising the real price of labor. In my critique of the book, I allowed that while this might sometimes be the case, it is not as important as Vedder and Gallaway claim. Their Reply does not succeed in vindicating their argument, because their wage averages fail to take into account variations in wages within phases of the business cycle; because they fail to take into account the effects of unemployment on potential productivity, distorting their measures of real wages; and because they ignore the vast literature on the subject.*

At this point brevity is called for:

First, Vedder and Gallaway's measures of real wages are, simply, wrong. Because the composition of employment by education and experience varies over the business cycle, the average wage paid to employed workers has a different pattern of variation than the wage that firm managers care about. This is important. Vedder and Gallaway ignore it.

Second, Vedder and Gallaway wrongly scale their measures of real wages by actual, not potential, productivity. As a result, shifts in pro-

---

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

J. Bradford De Long, Associate Professor of Economics, University of California at Berkeley, Berkeley, CA 94720, is a research associate of the National Bureau of Economic Research and a visiting scholar at the Federal Reserve Bank of San Francisco.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ductivity that are the result of changes in unemployment are moved from the "effect" to the "cause" side of the ledger. This is how Vedder and Gallaway generate false statistical confirmations of their theories.

Third, a methodological point: There is a large body of work on how to measure the cyclicality of wages, and on whether fluctuations in actual productivity over the business cycle are cause or consequence of the cycle. Vedder and Gallaway ignore this literature. They ignore it whether published in the University of Chicago's flagship journal, the *Journal of Political Economy*, or in Harvard University's flagship journal, the *Quarterly Journal of Economics.*

Now, if you want to contribute to a conversation—and economics *is* an ongoing intellectual conversation, carried out between people of many different methodological and political viewpoints—you have a moral obligation to your readers to situate your contribution. You need to say which recent and important contributions to the discussion you agree with, and those with which you disagree. And you need to say why.

Vedder and Gallaway do not do so.

At the very least, this is bad manners. If Vedder and Gallaway want *anyone* to take them seriously, they need to lay out why they think a broad range of smart, hard-working, and well-respected economists who have written on the cyclicality of wages and productivity—and who disagree with Vedder and Gallaway—are wrong.

Fourth and last, Vedder and Gallaway's tone is odd.

Their tone is odd in their claim that they have uncovered what has been hidden from others, *the* secret cause of unemployment.

Their tone is odd in their claim that they have "relentless and devastating evidence" that unemployment is caused by "minimum wages, legal privileges for unions, civil rights legislation, unemployment compensation, and welfare."

Their tone is odd in their calling those who disagree with them pseudo-intellectuals, in claiming that modern economics is little more than trivial mathematical formalization, in accusing John Maynard Keynes of launching an *ad hominem* attack on themselves from 62 years in the past, and in trying to borrow Karl Popper's intellectual authority to convict a number of economists of intellectual high crimes and misdemeanors.

Cutting connections with the ongoing conversation (and it is a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

powerful and interesting conversation) about the cyclicality of the real wage and of labor productivity; dismissing intellectual adversaries as pseudo-intellectuals; claiming to have uncovered secrets that have been hidden from others—readers should be sure to take these oddities of tone into account in evaluating the work of Vedder and Gallaway.

REFERENCES

De Long, J. Bradford. 1988. "It Doesn't Work." *Critical Review* 12(1–2): 59–69.

Gallaway, Lowell, and Richard Vedder. 1998. "Government and Unemployment: Reply to De Long." *Critical Review* 12(3): 253–64.

Vedder, Richard K., and Lowell E. Gallaway. 1993. *Out of Work: Government and Unemployment in Twentieth Century America*. New York: Holmes and Meier.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

conomy • Postmodernism
olitics • Development and
Inder-development • Popu
**Socialist Review**
ture • Radical Politics • Le
**Socialism with a Question Mark.**
lectoral Strategies • Post-I
Actually Existing Socialisr

**Phone in your subscription toll free**
**(new subscriptions only, please):**
**1-800-341-1522**

**Socialist Review**
3202 Adeline Street, Berkeley, California 94703

❑ $50 sustaining subscription (tax deductible; make check payable to CSRE.)
❑ $21 for one-year subscription. ❑ $26 outside the U.S.
❑ $37 for two-year subscription. ❑ $47 outside the U.S.

NAME_____ ADDRESS_____
CITY/STATE/ZIP_____
❑ VISA ❑ MASTERCARD #_____ EXP DATE_____
SIGNATURE _____

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Edward Feser*

# HAYEK, SOCIAL JUSTICE, AND THE MARKET: REPLY TO JOHNSTON

ABSTRACT: *David Johnston's Rejoinder to my defense of Hayek's critique of social justice, though it has the merit of attempting to deal with Hayek's claim that the very idea of social justice is incoherent (in a way other critics of Hayek have not), fails to undermine that defense. Johnston's suggested counterexample to Hayek's claim that talk of an injustice presupposes an agency responsible for the injustice is not even prima facie plausible; he overlooks crucial disanalogies between the pursuit of social justice and the pursuit of other social goals; and he fails to understand the distinction between Hayek's (negative) case against social justice and his (positive) case for the market.*

Friedrich A. Hayek was unusual among critics of political action in the name of social justice in that he questioned not just the wisdom or efficacy of schemes advocated to achieve it, but even the very *meaningfulness* of the idea of social justice—though he also argued that the attainment of social justice was a practical impossibility and that pursuit of it would lead inevitably to totalitarianism. In an earlier article in this journal (Feser 1997), I spelled out in detail and offered a defense of Hayek's case against social justice—a defense David Johnston ("Is the Idea of Social Justice Meaningful? Rejoinder to Feser," *Critical Review* 11, no. 4) finds wanting. What follows is a defense of my defense.

---

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Edward Feser, Department of Philosophy, University of California, Santa Barbara, CA 93106, e-mail feser@humanitas.ucsb.edu.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

## *The Meaninglessness of the Idea of Social Justice*

One of the complaints I made in the earlier piece was that Hayek's critics (including Johnston, in an earlier paper of his, 1997a) paid too little attention to the argument about meaninglessness, especially given that Hayek himself attached great importance to it. It is a merit of Johnston's reply that he there acknowledges this argument's centrality, and attempts directly to respond to it. But this attempt fails.

Hayek's argument, in a nutshell, was that talk about justice and injustice has application only where there is some agent or agents who can be said to have acted justly or unjustly, and that in the case of the distribution of wealth produced in the market order, there simply is no agency responsible for bringing about that distribution; therefore, there can be no meaning attached to the idea that a distribution of wealth in a market order can be just or unjust, and the notion of social or distributive justice is without content.[1]

Johnston challenges this argument by suggesting a putative counterexample to its main premise that talk about justice or injustice presupposes an agency responsible for the justice or injustice. A man might wrongfully be convicted of a murder, he says, even though all parties involved are acting in accordance with the law and in good faith, because exculpatory evidence fails to appear. In such a case, the man clearly suffers an injustice, even though "no one could reasonably be accused of a wrongful or unjust action" (1997b, 610). Although there are obviously agents involved who brought about the unjust result, the point, Johnston says, is that "they did not intentionally and with foresight wrongfully convict an innocent man, and those agents cannot be held responsible for committing an injustice, as they could be if they had deliberately convicted an innocent man, even though an injustice has occurred" (ibid.).

One problem with this example is that it is misleading to say that "no one could reasonably be accused of a wrongful or unjust action." The parties involved acted in good faith, and so we are loath morally to condemn them; but what they did was still clearly unjust. And thus it is perfectly appropriate to say that they performed an unjust action. They are, indeed, not morally *culpable* for the action under the circumstances, but that doesn't mean they didn't act unjustly. By the same token, though it would be correct to say that they are not *morally responsible* for the unjust act, it doesn't follow that they aren't

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"responsible" in another sense—obviously they are, in the sense that but for their deliberate actions, the conviction wouldn't have occurred.

This leads to the main problem with the illustration, in virtue of which it fails even as a prima facie counterexample, namely the fact that there *are* agents involved who are directly responsible for bringing about the injustice—it is irrelevant whether they *intended* the injustice or not. Hayek's point is not that in a market economy, there *are* agents who directly determine that a certain distribution results, only they don't do it intentionally; it is rather that there is no one who determines the distribution *at all* in the relevant sense, that is, the sense in which the jurors, lawyers, etc. determine the fate of the wrongfully convicted man: by directly putting him in the situation he's in (though doing so without intending an injustice). In the case of the wrongfully convicted man, if someone asked "Who did this to you?", the right answer would be "Those jurors and lawyers did!" even though the parties referred to acted in good faith. But in the case of a person who fails in the marketplace, not as a result of broken contracts, extortion, or the like, but simply because no one wanted what he had to offer, the right answer to the same question would be "No one." No one "sat at the controls" of the market, as it were, and determined (justly or unjustly, intentionally and with foresight or otherwise) that such a person would fail; the failure was rather the result of a blind, impersonal process.

It's true that in my earlier discussion of Hayek's argument, I spoke of there being no one who "intentionally and with foresight" brings about the market's results, but Johnston appears to misunderstand the point of this qualifier. There is obviously a *sense* in which the jurors, lawyers, etc. in his example *do* act intentionally and with foresight in committing the injustice against the accused: They know exactly what they're doing, after all: namely convicting a man; they just don't realize they're doing him an injustice (and thus in another sense they *don't* do what they do intentionally and with foresight). And it's in the sense of acting "intentionally and with foresight" in which the jurors, lawyers, et al., do indeed act that *no one* in the market acts: that is, intentionally and with foresight to bring about a given distribution.

Now of course there are people whose actions do have an effect on what happens in the market—pretty much everyone, in fact. But they don't in *any* sense act intentionally and with foresight *to bring*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*about the resulting distribution*: It's not as if, collectively, they act intentionally and with foresight to bring about distribution X (the way the jurors and lawyers act to bring about the conviction), only without intending X to be unjust. My point in using the qualifier was precisely to make this clear. It was further made clear, I thought, by my example of the "distribution" of body hair in society: That this distribution has the character it has is determined by human behavior—mating and grooming habits and the like—but it is obviously in no sense the result of human action in the way the conviction in Johnston's example is. In his example, there are agents who intentionally and with foresight directly bring about the conviction, even if they don't intend that it be unjust; while the same can't be said of the distribution of body hair. In this respect, that distribution is much like all sorts of results of human action, such as the cumulative effect on the atmosphere and weather patterns billions of human beings no doubt have simply by virtue of breathing, or the effect they have (or fail to have) on Greenland by virtue of not deciding to live there, or the effect they have on sea levels by deciding (on summer weekends, say) in large numbers to frolic in the oceans. Results like these are remote enough from anything that could plausibly be regarded as intention, foresight, design, or planning that they are accurately described as results of impersonal processes. And Hayek's point is that the distribution of wealth that results from the market process is much more like these sorts of results than it is like the result arrived at in something like a criminal trial. It is a distribution, in short, that is produced by actions that are in *no* sense intended to bring it about.

Moreover, Johnston's wrongful conviction example, even if it were like the case of the market, would in fact undermine his overall position. For the parties involved in the example, given that they acted in accordance with legal procedures, etc., are not culpable for redressing the injustice done to the accused if it is later discovered that he was wrongfully convicted. That is, even though their actions produced the injustice, we would not suppose, given the circumstances, that they should be required to pay damages to the accused, say, for the time he spent in jail. If so, then, by the same token, even if the distribution that results from the market process could be described as unjust, so that those who do not succeed in the market can in some sense be described as having suffered an "injustice," it would not follow (as Johnston would presumably say it does) that anyone who succeeds in the market is thereby culpable for "paying damages" (as it

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

were) to the unsuccessful, in the form of taxes used to fund welfare programs and the like. So long as the market's "successes" act in good faith and play by the rules—like the jurors, lawyers, and so on—then the former should, like the latter, be deemed to be free of any compensatory obligations to those unintentionally "hurt" by the process.[2]

Johnston also says, against Hayek's argument, that even if the detailed person-by-person results of market transactions can't be foreseen, the broad outlines of the resulting distribution can be foreseen and, insofar as public policy can alter the distribution, intentionally modified. But he thereby ignores the response I made to this sort of objection in the earlier paper (1997, 598–600). To reiterate only the most relevant point here: Just because we could, presumably, affect mating and grooming habits by legal means if we so desired, it doesn't follow that the current distribution of body hair is just or unjust. Neither does Johnston's point show that the distribution of wealth can meaningfully be described as just or unjust. (Nor should this be surprising: I never claimed, after all, that foreseeing and intending a distribution were *sufficient* conditions for that distribution's being just or unjust, only that they were *necessary* conditions.)

Moreover, the foreseeability of some future distribution, even if it *did* entail the justice or injustice of that distribution, tells us nothing about the justice or injustice of the *current* distribution. So suppose an advocate of social justice who wants, say, a more equal distribution than the current one, points out that such a distribution could be achieved if only we implemented policy P (so that, let us grant for the sake of argument, the future distribution could meaningfully be spoken of as just). It still wouldn't follow that the current distribution is just or unjust if this distribution (especially the parts of it the social justice advocate doesn't like) were itself not foreseen or intended. So, however else one could justify the implementation of P, he couldn't do so on grounds of social justice. And, of course, the whole point of appealing to social justice (usually) is to try to justify some redistributive or interventionist scheme. So even if Johnston's argument didn't have the problems it does have, it wouldn't help the social justice advocate in defending the sorts of policies he wants to defend. Even Hayek acknowledged that in some contexts, particularly in a full-blown socialist economy—since in that case some agency *would* be directly responsible for the distribution of wealth—the phrase "social justice" *would* have meaning. But this is no comfort to the social justice advocate who finds himself in a market economy: So long as, and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to the extent that, it remains a market economy, he can't justify a transition to some other sort of system by appealing to social justice.

### *Social Justice, Unfeasibility, and Totalitarianism*

Though the charge of meaninglessness was his primary objection against the ideal of social justice, Hayek did have other arguments against it as well, namely that it was impossible to achieve and that its pursuit would inevitably end in totalitarianism; and Johnston says something about my defense of these arguments.

Noting that it is the attempt "fully and consistently" to attain social justice that I represented Hayek as claiming would lead to totalitarianism, Johnston (1997b, 608–609) replies that the same objection can be made against the pursuit of all sorts of social goals: "Fully and consistently" to eliminate crime, for example, would no doubt require the institution of a police state. But that doesn't mean that, to avoid a police state, we ought not try to eliminate crime *at all.* Rather, we ought try to eliminate it to the degree consistent with the realization of other important values, such as liberty, personal privacy, and the like. Similarly, though the full and consistent pursuit of social justice might indeed lead to totalitarianism, all this entails is that we perhaps ought to settle for a partial realization of that goal, not that we should abandon it entirely.

This is fair enough, as far as it goes; but it doesn't go very far. In particular, Johnston does not seriously deal with the *reasons* Hayek thinks the pursuit of social justice must lead to totalitarianism, reasons that make it clear why the analogy with crime-fighting is not a strong one, and which I discussed at length in the earlier paper (1997, 587–89).

First of all, there is the fact that if Hayek's argument about meaninglessness is sound, the notion of social justice cannot even be made sense of except in a full-blown socialist economy, so that it is more or less a conceptual truth that the pursuit of social justice entails the institution of socialism. And it is obvious that there are serious problems involved in trying to avoid totalitarianism in *that* sort of system.[3]

But even apart from appeal to the meaninglessness argument, there are other reasons to doubt that the attempt to achieve social justice could fail to be a serious threat to freedom, such as the fact that there simply are no generally agreed-upon standards of desert, merit, need,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and so forth. Thus, in trying to distribute or redistribute wealth in a "socially just" way, the state would simply have to impose a single standard on all. Johnston acknowledges this to be a problem to which most advocates of social justice are not sensitive enough, but he points out that the same problem afflicts all sorts of government activities, "from the most rudimentary goals of crime prevention and defense to the most exotic promotion of the arts" (1997b, 611).[4]

I find it surprising that Johnston would so blithely suggest this as an adequate response to the objection at hand, especially given that the objection was put forward by possibly the most influential twentieth-century proponent of classical liberalism. A classical liberal cannot fail to regard Johnston's response as question begging. If by "crime prevention" Johnston means simply the prevention of murder, theft, and the like, then it is implausible to suggest that very many (if any) who accept the legitimacy of at least some sort of state are going to object to the values underlying such governmental activity. But if, as seems more likely, Johnston has in mind such activities as enforcement of laws against drugs, prostitution, and the like, then at least many of the Hayekian persuasion are going to object to *these* laws just as much as (and for many of the same reasons as) they object to the pursuit of social justice. Enforcement of drug laws, for example, has, in the view of many (indeed, including many in the "social justice" camp) become objectionable because it poses a serious threat to property rights and personal privacy. Thus, it will hardly do for Johnston to appeal to such laws as though they were uncontroversial cases of the legitimate imposition of the values of some upon all. And though it might seem to social-justice advocates an exaggeration to view government funding of the arts as an imposition of values that is but the first step on the road to serfdom, it would do them well to remember their own often-hysterical reactions to suggestions made by those among the "religious Right" that if government is to fund art, it can legitimately have a say in determining which values can and cannot be expressed in it. In dealing with the problem that Johnston acknowledges plagues a great many state activities, then, consistency requires that the advocate of social justice, if he himself finds troubling the idea that others might impose on him values of which he disapproves, recognize the fact that opponents of his own values have just as legitimate an objection to his imposition of the ideal of social justice on them.

Of course, the classical liberal (and especially libertarian) response

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to this problem—which is more or less Hayek's own response[5]—is simply to avoid, to the greatest extent possible consistent with the existence of a state at all, involving the state in areas where the imposition of values might occur. So it will hardly count as an adequate response to Hayek's argument to appeal to other cases of governmental imposition of values as if Hayek accepted them, or would have to accept them, as legitimate. Perhaps one *can* distinguish, in a non-arbitrary way, legitimate impositions of values from illegitimate ones; I am not simply ruling out that possibility from the start. The point is just that the Hayekian position is skeptical of such impositions in general, for the same reason it is skeptical of the imposition of the ideal of social justice, so that the burden of proof is on Johnston to show that such a distinction can be made if his objection is to have any force.

Johnston also fails to address the other respects in which the pursuit of social justice, in Hayek's view, poses a threat to freedom; ways that further distinguish this case from such cases as crime prevention. Again, these are discussed at length in my earlier paper, and I won't restate here everything that was said there. Suffice it to say that social justice is in tension with the rule of law in a way other governmental goals are not. Given differences in ability and resulting differences in rewards, governments pursuing social justice will have to impose greater burdens on some citizens than on others. Given the increase in political power entailed by redistribution in the name of social justice, coupled with the inherent tendencies of bureaucracies to act in their own self-interest rather than in the interest of the groups they were created to serve, governmental agencies cannot but fail to grow and increase in power indefinitely, to be increasingly less accountable, and to be increasingly subject to corruption. And given the moral attitudes associated with the demand for social justice, an entitlement mentality cannot fail increasingly to permeate society, leading to ever-greater demands for government to determine everyone's economic standing in a "socially just" manner (and thus increasing state control over the economy—with disastrous economic results that tend to lead to even *more* control), and to the degeneration of politics into a spectacle of special interests warring over control of state power and resources. The very nature of the pursuit of social justice, Hayek argues, is such that it *cannot* be limited in the way Johnston suggests. For it unleashes dangerous forces, both political and psycho-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

logical, which cannot be restrained, and which have a tendency inexorably to push society in a totalitarian direction.[6]

Johnston's failure to deal with these arguments also vitiates his suggestion (repeated from his earlier paper) that Hayek's argument has force only against the usual strategies used to achieve social justice rather than against the end of social justice itself, so that it might be possible to achieve social justice by means other than the institution of a full-blown socialist command economy (1997b, 609). We have just seen why *any* political attempts to achieve social justice are likely to have, to a very great extent, just the sorts of untoward results that a command economy would have. Still, though Johnston presumably had smaller-scale political measures in mind, he isn't explicit about this; it is possible he meant that there might be private-sector strategies available for approximating the realization of social justice. But Hayek would not object to nonpolitical efforts along these lines (from the practical point of view, that is; there's still the conceptual problem about the very meaningfulness of the idea of "social justice"). Final evaluation of Johnston's suggestion must wait upon his provision of some hint at just what alternatives to the usual strategies for achieving social justice he has in mind. I had criticized his earlier article for being extremely vague on this score, and unfortunately this is one criticism he does not try to answer in his rejoinder. (Johnston says that the fact that Hayek and I do not envisage such alternatives is "indicative of the poverty of [our] social imaginations" [1997b, 609]; apparently his own "social imagination" is no less impoverished.)

## *Hayek's Ethical Presuppositions*

Johnston's final (and, he seems to think, most telling) response to my defense of Hayek is to note that Hayek himself acknowledged that we have to make a rational choice between possible social arrangements, and to suggest that Hayek's own defense of his choice of the market order is at least as arbitrary and problematic as standard appeals made to social justice in defense of welfarist or socialist policies, if not more so. Of course, Hayek argued against opting for the pursuit of social justice in part on the grounds that it would bring about results far worse than the conditions the advocate of social justice wants to alleviate. But "by what standard," Johnston asks, "would these re-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sults be 'far worse'? To this question neither Hayek nor Feser seems much inclined to offer an answer" (1997b, 612).

Johnston, however, doesn't seem much inclined to *look* for an answer; else he would have seen that one is provided in my earlier article, beginning with the sentence immediately following the one in which I say that Hayek thinks the results of pursuing social justice would be "far worse than the circumstances the advocate of social justice wants to alleviate" (Feser 1997, 586). For I there begin my exposition of Hayek's claims that social justice is unrealizable and leads to totalitarianism. Johnston appears to suppose that by "far worse," Hayek and I mean "far worse" by reference to some moral standard at least as contentious as the ethic of social justice; but the context of my remark shows quite clearly that this is not the case. Hayek's argument is that the results of pursuing social justice would be far worse than what its advocates want to alleviate, *even by reference to their own standards.* That is, since, presumably, the advocates of social justice—and pretty much everyone else, for that matter—would, as much as Hayek does, desire to avoid economic collapse and totalitarianism, they should—if Hayek's arguments are cogent—forsake their commitment to social justice.

Johnston makes much of the fact that Hayek makes a positive case for the market in terms of its ability to satisfy the wants of the greatest number of people to the greatest possible extent, and that this defense is a kind of "utilitarian" defense—something he says my remarks in the earlier article indicate I don't understand (1997b, 612–13). But the point I was making is that Hayek, contra some of his critics, is not, in giving this "utilitarian" defense, arguing that the market order is the most *just* order. I didn't deny that his defense is a utilitarian one; I denied only that it is a defense in terms of a *utilitarian theory of justice*. This is not "a verbal quibble," as Johnston alleges (1997b, 613). For two reasons, it is crucial that Hayek's defense of the market, even if it is a moral defense, is *not* a defense in terms of justice. First, if it had been a defense in terms of justice, Hayek would have been contradicting his claim that the market as a whole (as opposed to the individual transactions taking place within it) is neither just nor unjust; that is, that the concept of justice simply doesn't apply to it. Second, calling a social arrangement *just* has implications that other moral ascriptions do not, implications which are at odds with Hayek's position: If justice demands X, then it follows that people have a rightful claim (a *right*) to X, one that it is plausible to suppose

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

government should enforce; while if it is only charity or benevolence or kindness or what have you that requires X, then even if it thereby follows that someone should provide me with X, it doesn't follow that I have a (government-enforceable) right to it. It might be that respect for benevolence requires that I give you my extra coat if it's cold outside; it doesn't follow that justice requires it, or that you have a right to my coat. In appealing to utilitarian considerations, Hayek is simply saying that if, out of benevolence, we'd like to maximize the satisfaction of the wants of as many people as possible, we should opt for the market; he isn't saying (and wouldn't and couldn't say, given his position on social justice) that a concern with *justice* should lead us to do this.

In any case, Johnston claims that Hayek's appeal to such moral considerations, since they are controversial and largely undefended, undermines the strength of his case against social justice: Maximizing the satisfaction of wants is one possible goal, but equalizing their satisfaction is another, and Hayek gives no reason to prefer the former to the latter (1997b, 613). But this is confused. Hayek's case against social justice is one thing; his case for the market is another. Even if the latter were to fail, this would, by itself, have no implications for the strength of the former. Suppose that Hayek is wrong in claiming that there are strong moral grounds for maximizing the satisfaction of desires, or wrong to suppose that the market would do so—how would this show that the notion of social justice does, after all, have meaning in the context of a market economy; or that it could be achieved; or that it would not, after all, lead to totalitarianism?

Moreover, unless Hayek's case against social justice is refuted, maximizing the satisfaction of desires would win by default over equalizing this satisfaction. For Hayek's critique of social justice undermines the standard case for trying to equalize the satisfaction of desires in

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

by itself does not necessarily favor one possibility over the other). What Johnston has in mind, as we see in his earlier article, is that an equal distribution, like an unequal, market-generated one, "would not presuppose agreement on the *ends* to which that wealth [once generated] should be applied" (1997a, 592, emphasis mine). But this isn't the sort of "openness" or "purposelessness" Hayek has in mind in saying that a market distribution is open or purposeless. He has in mind rather the fact that no one needs to plan for it or engineer it in order for it to come about (even though we know, in broad outlines, what the resulting distribution will look like); whereas tinkering has to be done with the economy in order to guarantee an egalitarian distribution. Egalitarianism requires agreement on ends (unless these ends are simply to be imposed on all); everyone has to agree to submit to a system of rules that would redistribute wealth so as to realize an egalitarian distribution. So everything Hayek says about the advantages of spontaneous orders as against planned formations, if it is otherwise unobjectionable, does favor an unhampered market distribution over an egalitarian one.

Thus, even if we grant—as I acknowledge we should—that Hayek's own positive ethical presuppositions need greater articulation and defense than he gave them,[7] this has no bearing on the strength of his critique of social justice. Nor should this be surprising: As intellectual history shows us, one rarely needs an airtight positive vision of one's own in order to punch holes in, and even utterly destroy, the arguments of an opponent. Hume's project is only the best-known example of this phenomenon. In economics, Hayek and his teacher Mises are widely considered, even by many who reject their positive commitment to the unbridled free market, to have decisively refuted the view that central planning of the economy is possible. The most that Johnston has shown, then (though I do not grant that he has shown even this much), is that Hayek's achievement regarding the issue of the moral foundations of the market is, like these other examples, a purely negative one. It remains an achievement nonetheless.

NOTES

1. The reader is referred to my earlier paper for a fuller elaboration and defense of this argument, an argument Hayek himself develops in *The Mirage of Social Justice* (1976), volume two of his trilogy on *Law, Legislation, and Liberty*.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

2. It will not do to say, in reply to this, that among the rules successful economic actors would have to follow in order to act in good faith in the first place would be rules requiring payment of taxes to fund such programs. For it is precisely by an appeal to social justice that such taxes are typically justified, so that such a response would beg the question.
3. Given this point, and the points that follow—which are largely restatements of arguments made in the earlier paper—it is mystifying why Johnston should say that Hayek's claim that social justice can be achieved only in a thoroughgoing totalitarian socialist economy is "unfounded" and "entirely undefended by Hayek and Feser" (1997b, 609).
4. Johnston also says that an argument to the effect that lack of agreement on such standards entails that the idea of social justice is meaningless would be misconceived (1997b, 611). Fair enough; but then, neither Hayek nor I ever gave such an argument.
5. I am aware that it is unclear to what extent Hayek would go along with the recommendations of his more thoroughgoing libertarian followers regarding the proper functions of government. My point is just that the considerations that led Hayek to be wary of the pursuit of social justice also led him to be wary of many other state activities, and have led many of his admirers to advocate, for Hayekian reasons, an even more minimal state than he did.
6. See Friedrich Nietzsche's "Of the Tarantulas" in his *Thus Spoke Zarathustra* for a vivid description of the poisonous, destructive attitudes that arguably underlie many demands made in the name of social justice.
7. Though the value of Hayek's positive contribution in this area, particularly his defense of traditional morals in terms of cultural evolution (in e.g. *The Fatal Conceit*), is, in my view, often underestimated.

## REFERENCES

Feser, Edward. 1997. "Hayek on Social Justice: Reply to Lukes and Johnston." *Critical Review* 11(4): 581–606.

Hayek, F. A. 1976. *Law, Legislation, and Liberty*, vol. 2. *The Mirage of Social Justice*. Chicago: University of Chicago Press.

Hayek, F. A. 1988. *The Fatal Conceit: The Errors of Socialism*, ed. W.W. Bartley, III. Chicago: University of Chicago Press.

Johnston, David. 1997a. "Hayek's Attack on Social Justice." *Critical Review* 11(1): 81–100.

Johnston, David. 1997b. "Is the Idea of Social Justice Meaningful? Rejoinder to Feser." *Critical Review* 11(4): 607–614.

Nietzsche, Friedrich. 1969. *Thus Spoke Zarathustra*. New York: Penguin Books.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# AGENDA

A JOURNAL OF POLICY ANALYSIS AND REFORM

*Agenda* is a quarterly journal published by the Centre for Applied Economics in the Faculty of Economics and Commerce at The Australian National University. Launched in 1994, it is written in plain English and aims to be accessible to the general reader as well as to the specialist. It deals largely with economic policy in Australia and New Zealand but gives ample space to social and legal policy and also to the moral and philosophical foundations and implications of public policy.

As well as refereed full-length articles, *Agenda* contains shorter items and reviews of books and government publications.

***Recent items:***

*New Zealand's Fiscal Responsibility Act*
Graham Scott

*Public Policy and National Saving*
Vince FitzGerald Don Harding Ian Harper

*Taking Without Paying: Interpreting Property Rights in Australia's Constitution*
John Forbes

*Central Bank Independence and Accountability: The New Zealand Case*
Stephen Kirchner

*After Feminism: Taking Human Diversity Seriously*
Michael Warby

***Subscriptions***: Four issues: Australia, New Zealand, Papua New Guinea, A$48. International, A$68 (mailed by economy air post). Send cheque or credit card information to:

The Managing Editor
*Agenda*
GPO Box 3265
CANBERRA ACT 2601
Australia
Or fax: (61) (0)6 249 5124 Or phone: (61) (0)6 249 0385

Complimentary copies of back issues of *Agenda* are available on request.


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Chris Matthew Sciabarra*

# ARE WE ALL DIALECTICIANS NOW? REPLY TO MACGREGOR AND FRIEDMAN

ABSTRACT: *In his critique of* Ayn Rand: The Russian Radical, *David MacGregor argues that my book trivializes dialectical method. He fails to notice the many nondialectical assumptions that pervade contemporary social theory and practice. Dialectics, as a context-sensitive methodological orientation, can provide tools for a better grasp of systems and processes in the real world—the goal, as I understand it, of the "post-libertarian" approach Jeffrey Friedman advocates.*

I want to thank David MacGregor ("It Ayn't Rand," *Critical Review* 11, no. 3) and Jeffrey Friedman ( "What's Wrong with Libertarianism," ibid.) for contributing to a much-needed dialogue on the nature of libertarian social theory. In this response, it is impossible for me to address all of the issues raised by MacGregor and Friedman in their essays, so I will focus on just a few themes.[1]

MacGregor (1997, 382) disagrees with my thesis that Rand provides us with an alternative to the dialectical standpoints of either Hegel or Marx. He sees the problem as partially an outgrowth of my indifference to one of Rand's "pernicious flaw[s]"—her maintenance of "the duality of statism and capitalism." Of greater significance, perhaps, is MacGregor's charge that my account suffers from having drawn from the Marx-

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Chris Matthew Sciabarra, Visiting Scholar, Department of Politics, New York University, 715 Broadway, New York, NY 10003-6806, e-mail cms10@is2.nyu.edu, the author of *Marx, Hayek, and Utopia* (SUNY, 1995), *Ayn Rand: The Russian Radical* (Penn State, 1995), and the forthcoming *Total Freedom*, thanks the editor for helpful suggestions.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ist theorist, Bertell Ollman, whose works illustrate a "trivialization of the dialectic" such that "it would be difficult to imagine a philosopher or social thinker who didn't" employ this method (ibid., 384).

It can be argued that Ollman's conception of dialectics amounts to a "trivialization" only if one considers the formalization of principles to be a trivial activity. Ollman (1993) identifies the many interconnected aspects of dialectical thinking—from abstraction to integration. On the basis of core ontological and epistemological insights into real-world relations, a dialectician examines the objects of study in their intricate systemic and dynamic complexity. Such inquiry is followed by self-clarification, in which the theorist intellectually reconstructs the whole before proceeding to exposition, in which the presentation of findings must take into account the context and interests of the audience one addresses. Ultimately, this dialectical enterprise requires praxis—conscious action in the world that brings about change, even as it deepens our understanding of that world.

Ollman champions Marxism as the most consistently dialectical system, but his formalization of dialectical principles has an unintended effect. It provides us with an opportunity to disconnect those principles from Marxism, and to practice them in the articulation of a non-Marxist radicalism.

To pull the dialectical kernel from its Marxist shell, and to imbue it with new substance, is an activity that has important historical parallels. In characterizing dialectic as "the coping-stone of the sciences," Plato (*Republic*, 531d–532a) viewed the method as a type of "synoptic" thinking (537c) in search of transcendent truth. For this reason, Plato, or at least the Plato of tradition, has been criticized as a utopian. Hayek uncovered a profound paradox at the foundation of all utopian theories. Utopians see society as composed of an indefinite number of relationships. But since their ideals are totalistic, they need to possess perfect knowledge of every relationship in order to produce their new society. The utopian vision is a "synoptic delusion," as Hayek (1973, 14) called it, since no individual or group of individuals—be they central planners or philosopher-kings—can possibly gain knowledge of everything that exists.

In presuming that they can acquire such knowledge, utopians, like the divine creator of Plato's *Timaeus*, exempt themselves, by implication, from the totality they seek to change. They pursue knowledge of all the internal relations within a totality, even as they inadvertently take on an external relationship to that totality. They forge a tacit dualism between

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

themselves and the real world, Hayek suggests. Their resolution of this paradox is an instance of crude "constructivistic" rationalism, which builds a bridge to an imagined future over a landfill of human bodies.[2]

In revolt against Platonic idealism and rationalism, Aristotle was the first philosopher to formalize and enunciate the principles of dialectical method. For Aristotle, dialectic was not a synoptic discipline—no *human* activity could be—but a relational and perspectival technique for establishing the foundations of scientific research. His handbook of dialectic, the *Topics*, became the definitive theoretical treatise on the subject. It pioneered strategies for contextual analysis through abstractions of vantage point, subtle shifts in our "points of view," that generate comprehensive understanding, not transcendental illusion.

Some commentators, however, such as Richard Robinson (1953, 72), criticize Aristotle for having isolated dialectic "from the source of its inspiration"—Plato's idealism—and for having transformed the method into a "dubious," one might say "trivial," analytical technique. But this criticism does not appreciate the effectiveness of Aristotle's dialectic as a tool for real-world engagement. Aristotle repudiated those who sought to apply various a priori metaphysical doctrines to the study of reality, and who tried to force the world into their conceptual straitjackets. He rejected Democritean atomism, Parmenidean monism, Pythagorean dualism, and Platonic synopticism. He aimed to provide each discipline with methodological legitimacy, even as he allowed for essential interconnections between disciplines.

Even though Hegel greatly appreciated Aristotle's achievements, his perspective embraced the Platonic "longing for the divine," as the feminist theorist Cynthia Hampton (1994, 236) has called it. Hegel wedded dialectic to a view of history as the triumph of *Geist*, as if he—or anyone—could grasp its essence from an Archimedean standpoint outside the historical process. In an important sense, Marx and Engels tried to achieve an intellectual inversion of Hegel, like that of Aristotle over Plato. By turning Hegel's dialectic "right side up again," Marx ([1867] 1967, 20) tried to distinguish his own method from its former idealist incarnation (though his view of history reproduces, inexorably, Hegel's synoptic hubris). While Marx never wrote his promised methodological treatise, Ollman has sought to articulate Marxism's underlying dialectical principles as formal tools for social analysis. If Ollman's formalization amounts to triviality, then it is no more trivial, and no less important, than Aristotle's similar project, which legitimized dialectic by disconnecting it from the Platonic ontology.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In my view, however, there is more work to be done—because dialectic, as conceived by Platonists, Hegelians, and Marxists, has for too long been wedded to a kind of organicism that emphasizes synoptic knowledge of a totality. Such synopticism undermines the dialectical project because it presumes an illusory acontextual vantage point on history. By reconstructing dialectic, libertarians, who have long been vilified for their alleged ahistorical atomism, might wrest it from its exclusive contemporary association with the left. By elucidating a dialectical sensibility in the works of key classical- and neo-liberal thinkers, I am engaging self-consciously in a subversive strategy. Half the battle is won when I have convinced MacGregor (1997, 374) and others to recognize "that Rand's thought cannot be properly understood apart from the consideration of . . . dialectics."

What is dialectics? Dialectics is a species of the genus, methodological (or research) orientation. A methodological orientation) is an intellectual disposition that applies a specific set of broad ontological and epistemological propositions about objects of study and their typical relationships to a particular field of investigation. Dialectics offers a formal structure of analytical tools that enables us to undertake a systematic course of action so as to achieve a particular goal, namely, the correct understanding and transformation of reality. Dialectics is an orientation toward contextual analysis of the systemic and dynamic relations of components of a structured totality.

This is a fairly innocuous definition—except for those who favor the status quo. Who on earth could possibly be for context-dropping in any research agenda? After all, the aspiration to contextualization is something that most social scientists and philosophers share—at least in theory. If context is so important to dialectics, as I suggest, so as to be a virtual synonym for what all good thinkers *should* do regardless of their political affiliations, would this necessarily lend credence to the belief that we are all, in a trivial sense, dialecticians? In my view, the acceptance of such a proposition would itself trivialize the difficulty of achieving dialectical understanding. To celebrate systems- and process-oriented contextuality as a hallmark of one's thinking is far easier to utter as a theoretical principle—nobody would oppose it in the abstract—than to execute with full consistency. What makes a dialectical enterprise successful is how effectively this theoretical commitment is enunciated and practiced.

One of the most important implications of its practice is that it will drive us toward a repudiation of those static modernist dualities that inform much of social science—the rational versus the empirical, fact

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

versus value, morality versus prudence, and so forth. Moreover, it will help us to recognize the organic connection between theory and practice, for social change is immanent in social critique. Every critique of the status quo carries within it the impulse toward transformation. It is for this reason that dialectics is often conjoined with political radicalism, and it is for this reason that I devoted a book to analyzing one Russian radical's dialectical sensibility.[3] Ultimately, what must be defended is not merely the legitimacy of dialectics, but the legitimacy of Rand's particular application of a dialectical orientation.

My view of dialectics is primarily metatheoretical. One might say that it constitutes an "ideal type," a definition by essentials. It is manifested in many systems of thought across disciplinary boundaries, even though no thinker has embodied its characteristics in "pure" form. Then again, no thinker can be classified as a pure atomist, dualist, monist, or organicist either. But these orientations exist, and they are apparent in many different theoretical approaches.

For instance, those who proceed on strict atomist assumptions have given us the one-dimensional construct of "economic man." Those who proceed on strict organicist assumptions have given us the equally one-dimensional "oversocialized conception of man," as Dennis Wrong (1961) has characterized it. And among dualists and monists, one finds statists and anarchists of various stripes who dichotomize state and civil society, and who seek resolution in the one-sided accentuation of a single principle to the detriment of the other. These nondialectical approaches to social inquiry entail what Tibor Machan (1974, 47) identifies as the "blow up fallacy." This fallacy

> consists, first, in making diligent inquiries into some aspect of reality and arriving at significant, often true, and, at times, startling conclusions, including principles by which we can best understand what happens in the area being studied. But then an entirely unjustified turn is taken. The conclusions and principles are lifted out of the special field and imported into some other area. The picture taken in the special domain is *blown up* with the intent to offer us an understanding of much more, and sometimes all, of reality. (Ibid., 52)

Nondialectical theorists often declare the predominance of a single metaphysical doctrine, while attempting to fit the facts into their preconceived models. Frequently, these models are defined in terms of their position on the nature of relations, whether they be "external" or "internal." The externalists view entities as entirely independent of one

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

another. The internalists view entities as constituted by their relations, such that any alteration in the network of relations will change the nature of the entity. Whereas atomists and dualists rely on externalist doctrines, organicists and monists rely on internalism.

A properly dialectical approach eschews any a priori commitments in this regard. Opposition to reductionism is founded on interrelated methodological and substantive considerations.

Methodologically, reductionism is acontextual. Reductionists might claim that they are attempting to grasp the full context, but one does not grasp context by universalizing, and hence, reifying, a single constituent of it. The primacy of a single factor in any given context is something that must be proven through investigation, not accepted and applied a priori in an interdisciplinary fashion. It matters not if the single constituents are the individual atoms of neoclassical economics or the synoptic organs of proletarian planning. Both neglect context: the former creates a bloodless, ahistorical, acultural automaton, the latter a bloody, totalitarian barbarism. Just as context is ignored when we break the whole into disconnected parts, so too is context ignored when we assume, as if by omniscience, that every part is expressive of—and can therefore be controlled by—the whole.

Substantively, dialectics requires a moment of inquiry. It is only inquiry that can elucidate the nature of the relationships involved. If one's inquiry leads one astray, all the alleged insights into the mutual implications and reciprocal linkages among diverse factors will be immaterial. The question is: Are the conclusions valid? To the extent that we substitute purely methodological concerns for substantive ones, we beg that question.

Rand's contextual theory of definition recognizes this intersection of methodology and content, navigating between the muddy waters of externalism, in which our knowledge of one thing bears virtually no relationship to any other things or processes in the universe, and internalism, in which we cannot know anything without knowing everything. Externalism is characteristic of public-policy formation in liberal democracies, where "muddling through" produces piecemeal, ad hoc, *dis*integrated legislation in response to historically constituted systemic social problems. Internalism is illustrated in the attempts of central planners to gain total control over knowledge and production.

Tracing interconnections among seemingly disparate factors, treated as preconditions and effects of each other, is an empirical task that must always be related to a specific cognitive purpose. Rand goes a long way

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

toward recapturing the Aristotelian intent of dialectical inquiry as a critical and constructive, even revolutionary, analytical tool. Since this notion of context is so deeply embedded in Objectivism, I believe that Rand provides the rudiments of a significant and valid alternative to both the dichotomizing tendencies in libertarian theory, which have undermined the very possibilities for social praxis, and the synoptic tendencies in Hegelian and Marxian theory, with all their fatal consequences for social praxis.

This stress on context as the defining characteristic of dialectics is by no means trivial. Among the dictionary definitions of "context" is this one: "the whole situation, background, or environment relevant to some happening. . . ." The word derives from the Latin, "*contextus*," from "*contexere*," which means "to weave together," conjuring up the image of a tapestry being woven together as if through the activity of weavers, who use thread and the many tools at their disposal.

Dialectics entails a woven-together understanding of the whole situation, background, or environment relevant to the study of any object. But as the analytical weavers, we are part of the process of weaving together. Hence, our perspective on the object is crucial to our grasp of it. We are engaged with the object. And as Peter Boettke (1995, 290) reminds us, in the human sciences, "we are what we study." Such study is thoroughly relational; it involves an active relationship between the object of study and the person who studies it. It must take into account our very own context of knowledge, and the tasks we've set out to accomplish.

The contextual view has important implications not only for the analysis of systemic relations, but also for an understanding of their dynamic interconnections over time. Ollman rightfully criticizes the mainstream social-scientific view that things "exist *and* undergo change." It is as if these two aspects are "logically distinct," says Ollman. The historical dimension is "something that happens to things," rather than something that is part of their nature. By contrast, a dialectical perspective stresses that "whatever something is becoming . . . is in some important respects part of what it is, along with what it once was." Such a dynamic approach allows us to extend the boundaries of our analysis so that our understanding of any object includes the "surrounding conditions" that enter into its evolutionary development (Ollman 1993, 29–32).

Ollman resurrects a principle well known to Hegel, who highlighted the ancient paradox of motion and time. Hegel (1970, 320) reminds us

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that "Zeno argued that a flying arrow cannot move because at any given moment it always occupies a space equal to itself, and everything which does this must be at rest." For Hegel, it was "Aristotle [who] point[ed] out that this argument rests upon the assumption that time consists of 'nows,' and that this is a questionable proposition."[4] Hegel's project was, in some respects, an attempt to recapture the dynamic Aristotelian perspective.

Such dynamism was later made the centerpiece of Henri Bergson's assault on formalism and scientism. Like Aristotle and Hegel before him, Bergson did not see time as an aggregate of discrete moments, but as a continuous, dynamic flow. He viewed each event as interpenetrating and permeating other events, such that no event could be disconnected from its prior or posterior moments. We can isolate such moments for the purposes of abstraction, Bergson explains, but we cannot reify these moments without damaging our understanding of the creative forces of "emergent evolution."

This Bergsonian dialectic has had an impact on the development of late twentieth-century Austrian theory, especially in the works of Gerald P. O'Driscoll Jr., and Mario Rizzo. They are deeply critical of the Newtonian "static conception of time" as applied to social studies, in which "the present is a virtual stop—the very negation of passage or flow." By contrast, a dynamic conception prioritizes movement from the past to the future, in which "the future is *partially* determined by antecedent conditions" (O'Driscoll and Rizzo [1985] 1996, xv, xxviii). Among Austrian-school economists, this focus on systemic processes is paramount. O'Driscoll and Rizzo recognize correctly that Carl Menger, the founder of the Austrian school, pioneered this "conception of social science," which was quite "similar" to Marx's (ibid., 128n6).[5] It is a conception that does *not* trivialize time and change, for these phenomena are central to any properly scientific approach.

The dialectical turn in Austrian economics is having a profound effect on the development of a bona fide radical alternative for those who wish to engage in "organic" social theorizing, without being socialists, while retaining a commitment to "individualism," without being atomists. In the pages of this very journal, for instance, Boettke (1997) has criticized the atomizing assumptions of neoclassical economics. We cannot discount the pervasive influence in social science of this nondialectical neoclassical model, especially in an era of academic economic imperialism, where many non-economists, including political scientists, try to ape its static, ahistorical premises. For dialectics, movement, ambi-

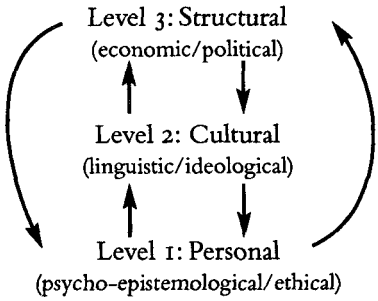
LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

guity, and paradox are not exceptions to our model of reality; they are the things needing explanation.[6]

This dialectical turn is also on display in the works of Ayn Rand. It is my conviction, however, that Rand's system is important not only because of its dialectical character, but also because of its enormous *insight*. True, in *The Russian Radical*, I do not argue for the validity or invalidity of Rand's thought. But a brief exploration of its structure can provide us with a better appreciation of its value. While Rand was not correct in every pronouncement she made, her dialectical understanding of power relations in contemporary political economy is quite compelling.

Not simplistic by any means, Rand worked on three distinct levels of generality in her social theory, abstracted and isolated in my book for the purposes of analysis, but never reified as wholes unto themselves. Each level is constituted by social relations. Each level is a precondition and effect of the others.

Figure 1. Ayn Rand's Multilevel Analysis of Power Relations




On Level 1 (L1), the personal level of analysis, Rand analyzed relations of power from the vantage point of the individual's ethical and "psycho-epistemological" practices or tacit (implicit) methods of awareness.

On Level 2 (L2), the cultural level of analysis, Rand analyzed relations of power from the vantage point of language, education, aesthetics, and ideology.

On Level 3 (L3), the structural level of analysis, Rand analyzed relations of power from the vantage point of politics and/or economics, tracing their reciprocal effects on formal structures, processes, and institutions.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The potential of Rand's model can be elucidated if we group the levels into three distinct forms—much as Hegel did in his analysis of the syllogism and its various permutations:[7]

*I: L1-L2-L3.* In this form, the personal (L1) and structural (L3) levels are placed in the background of our analysis, and the preconditions and effects of culture (L2) are made the primary factor. When Rand engaged in this mode of inquiry, she brought into focus the dominant cultural traditions and tacit practices that, she argued, helped to perpetuate the overall system that she called "statism." But an exclusive focus on these dominant traditions and practices tends to shrink the importance of people's abilities to alter their ethical or psycho-epistemological habits (L1). Additionally, this focus minimizes the importance of the political and economic structures (L3) that both require and perpetuate specific cultural practices. In Rand's view, statism demands "mystic," "collectivist," and "altruist" practices, since it necessitates irrationalism, the primacy of the group, and the necessity of self-sacrifice. Cultural contextualism—that is, paying attention to the importance of cultural context in the struggle for social change—Rand thought important. But she rejected cultural determinism unequivocally.

*II: L2-L1-L3.* In this form, the cultural (L2) and structural (L3) levels of analysis are dropped to the background, and the preconditions and effects of the personal (L1) are primary. In this analytical moment, Rand brought into focus the importance of individual and interpersonal ethical and psycho-epistemological practices that, she thought, perpetuated the irrational culture and politics that statism requires. Such a focus underscores Rand's view that individuals need to change themselves in any attempt to change society. They need to practice rational virtues in pursuit of rational values, to engage in introspection, to articulate their thoughts, emotions, and actions, and to take responsibility for their own lives.

Hayek recognized this same principle. One of the most underappreciated aspects of his book, *The Road to Serfdom*, is his similarly constituted movement toward a multilevel, dialectical social analysis. Hayek argued that "the most important change which extensive government control produces is a psychological change, an alteration in the character of the people." This social-psychological corruption is a very slow process, in Hayek's view, but it is no less insidious. "The important point," Hayek states, "is that the political ideals of a people and its attitude toward authority are as much the effect as the cause of the political institutions under which it lives" ([1944] 1994, xxxix). This recipro-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cal connection between social psychology and politics must not go unnoticed:

> Freedom to order our own conduct in the sphere where material circumstances force a choice upon us, and responsibility for the arrangement of our own life according to our own conscience, is the air in which alone moral sense grows and in which moral values are daily recreated in the free decisions of the individual. Responsibility, not to a superior, but to one's conscience, . . . the necessity to decide which of the things one values . . . and to bear the consequences of one's own decision, are the very essence of any morals which deserve the name. That in this sphere of individual conduct the effect of collectivism has been almost entirely destructive is both inevitable and undeniable. A movement whose main promise is the relief from responsibility cannot but be antimoral in its effect, however lofty the ideals to which it owes its birth. (Ibid., 231–32)

Like Hayek, Rand recognized that an exclusive focus on the personal level tends to shrink the importance of cultural and structural factors, which provide the context for, and have a powerful effect on, people's ability *to be* individuals. Certain tacit cultural attitudes and practices are so deeply embedded in our lives, Rand argued, that it is extremely difficult to call all of these into question. Likewise, certain political and economic realities often constrain and shape our ability *to act* as individuals. Statism constrains our ability to act as individuals, since groups become the most important social unit for political policy. Those who believe that all we need to do is "free ourselves first," and the rest will follow automatically, often fall victim to Level-1 thinking, divorced from Levels 2 and 3.

*III: L1-L3-L2.* In this form, the personal (L1) and cultural (L2) levels of analysis are dropped to the background, and the preconditions and effects of political and economic structures, institutions, and processes are primary. For Rand, this perspective has the advantage of bringing into focus the dominant political and economic practices that help perpetuate the overall system that is statism—the regulations, taxes, prohibitions, laws, and guns that constrain us. But an exclusive focus on these dominant political practices tends to shrink the importance of, and the need for, individuals to alter their ethical or psycho-epistemological habits. Such a focus also tends to obscure the importance of culture, which has a powerful effect on the kinds of politics and economics that are practiced.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In essence, one of the most trenchant criticisms that Rand leveled against libertarian theorists was that some of them reified Level-3 analysis, as if attacking the state were all that is needed to liberate humanity. Such a strategy is futile, in Rand's view, in the absence of a supporting edifice of cultural and personal practices that make the experience of political freedom possible. This is one key distinction between Rand and Rothbard—two thinkers whom Jeffrey Friedman (1997, 450) conjoins. In Rand's view, libertarian anarchists like Murray Rothbard had dichotomized personal ethics and political morality, culture and law, state and market, in such a way as to demand a monistic resolution of their presumed mutual hostility. For Rothbard, an a priori libertarian law code provided for all ethical and cultural diversity, as surely as an ahistorically untainted market provided for all defense and judicial services.[8]

By tracing the implications of the trilevel model, we can highlight the organic links Rand saw among these various social factors. Rand subjected virtually every social problem—from racism to censorship—to the same multidimensional analysis, rejecting all one-sided resolutions as partial and incomplete. There is an organic unity of personal, cultural, and structural components in each of her commentaries. It is for this reason that, as a "radical for capitalism," Rand wrote: "*Intellectual* freedom cannot exist without *political* freedom; political freedom cannot exist without *economic* freedom; *a free mind and a free market are corollaries*" (1961, 25).

Surely, people throughout history have experienced various degrees of intellectual, political, and economic freedom. But Rand is saying something of much greater significance here. Just as relations of power operate through ethical, psychological, cultural, political, and economic dimensions, so too, Rand reasons, the struggle for freedom and individualism depends upon a certain constellation of personal, cultural, and structural factors that support it, nourish it, and sustain it.

Rand's dialectical dexterity notwithstanding, there are nondialectical elements in her system.[9] MacGregor convincingly notes the appearance of some vestiges of dualism in her work. Yet, while Rand recognizes that the quest for freedom cannot be severed from the social conditions that make its practice *fully* efficacious, it is not entirely true that such "freedom awaits the coming of an ideal, non-statist, capitalism" (MacGregor 1997, 385). In her earliest journals, Rand recognized that freedom could not be "disconnected from its content." She wondered: "Isn't it as Nietzsche said: 'Not freedom *from* what, but freedom *for*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

what?'" (Rand 1997, 70). To Rand, freedom springs from our *method* of awareness; it is rooted in the fundamentally volitional nature of consciousness, our choice of whether to augment our awareness—the primary epistemic, psychological, and moral choice that each individual faces. Rand's portrait of the heroic individual is almost always centered on this distinguishing agency, which must be practiced, in her view, if we are to survive as *human beings* under *any* social conditions.

Despite her emphasis on capitalism in its "binary opposition" to statism, Rand refuses to remove the market from its institutional and cultural context. Of course, it might be said that the legal framework of markets is "coercive," for if one breaks the laws of a capitalist society, one faces sanctions. But in Rand's view, the coercive use of force can play only one legitimate social role: the protection of individual rights. When it becomes a vehicle for the violation of such rights, when it is transformed into an instrument for the initiation of, rather than as retaliation against, force, it is unjustified.

The basic distinction that Rand endorses is not one between capitalism and statism, but between reason and force. Rand argues that the initiation of force paralyzes the mind, for it subverts volitional consciousness in such a way as to invalidate our choices. By forcing us to act against our will, which instantiates what we know to be right in the context of our own knowledge, purposes, and values, the coercive state cannot achieve the "cooperative determination of human destiny" that MacGregor's Hegel seeks (1997, 390). It achieves the exact opposite: social fragmentation, economic disintegration, and political brutality.

In the same issue of *Critical Review*, Friedman (1997, 409) bemoans the "libertarian doctrine [that] tries to unite consequentialist arguments about the harmful empirical *effects* of the modern state with nonconsequentialist arguments about the allegedly *intrinsic* evil of state regulation and redistribution." Rand, however, opposes the very notion of an *intrinsic* evil, since the "intrinsicist" view of morality is one that fails to recognize the relational tie between subject and object. Values—or *dis*values—do not reside in the subject, nor do they inhere in the object. They pertain to a relationship between the subject and the object. Rand repudiates the coercive initiation of force precisely because it has deleterious effects on the subject's consciousness and behavior. She did not engage in full-bodied "empirical" testing to discover these consequences; she lived them. In the Soviet Union, she was provided with a virtual historical laboratory by which to judge the effects of coercion on human agency. Friedman, however, rejects Rand's act of "creative

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

synthesis" because he believes that she has "psychologized" a political problem (ibid., 50–51). He praises Rand for being

> perceptive enough to see that politics must be related to culture, but her form of political analysis reduced culture to a simplistic psychological disease, envy, for which a simplistic philosophy, egoism, was the cure. In this way she transmuted the essentially consequentialist force of her dystopian vision into a set of a priori precepts that made consequences irrelevant. (Ibid., 451)

The result has been "libertarian ideology," Friedman tells us, instead of "a penetrating critical inquiry into the realities of modern government and culture." The future belongs to a new generation of "post-libertarians," says Friedman, for whom empirical investigations will not produce "political conclusions that have not yet been justified" (ibid., 453, 459).

But Rand's trilevel model of power relations provides profound theoretical possibilities for those who eschew a priori prescriptions in favor of such "penetrating critical inquiry." What is so striking about Rand's dialectical analysis is its attempt to grapple with the real-world interpenetration, rather than mere "binary opposition," of freedom and coercion. In the contemporary "mixed" economy, these distinct principles often coexist within the consciousness and life of every individual. By exploring their interrelationships of mutual support and mutual antagonism, through such concepts as the "sanction of the victim," Rand seeks to get to the fundamental roots of power. For Rand, state privilege engenders an endless proliferation of pressure groups at war with one another. As the state comes to dominate social life, the lines begin to blur between those who are genuine producers and those who are not, for nearly everyone becomes a parasite in some capacity. To alter this reality, by first reasserting the essential distinction between reason and force, requires a moral and cultural revolution, Rand insists, long before any political change can be effected. As a self-confessed "proletarian defender of Capitalism," Rand (1995, 58) argues that it is a

> great mistake . . . [to assume] that economics is a science which can be isolated from moral, philosophic and political principles, and [be] considered as a subject in itself, without relation to them. (Ibid., 260)

One might reasonably dispute any of Rand's *particular* analyses. Nevertheless, her distinctive application of a dialectical model harks toward

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the kind of "anthropological, economic, historical, sociological, and psychological investigations" that Friedman (1997, 458) thinks essential to any post-libertarian project. Howard Sherman (1995, 238) has stressed that it is a scientistic distortion of dialectical method to provide a priori formulas by which to interpret and shape the world, as if one could understand the complexities of society without actually engaging in empirical investigation. That Rand suggests just such a model is, in my view, one of her most provocative contributions to libertarian, "post-libertarian," and radical social theory.

In the end, Rand's exaltation of a "community of values" is one that challenges the very notion of a state-centered politics, for it requires a voluntary and benevolent association of free-thinking individuals. We can legitimately question if such a society can ever be realized. I suspect, however, that even post-libertarians cannot dispense with any and all dreams for a humane social order. We cannot escape our own values. So it is best to articulate them, and to develop both the methodological and substantive tools by which to understand them, and their context, the *real* social conditions that inhibit—or promote—their actualization. As social scientists, we should be prepared to change our thinking in the face of objective reality; as social actors, we should be prepared to change the reality itself. Both enterprises require intellectual honesty and courage.

NOTES

1. Readers seeking more comprehensive discussions of my book and the controversies it has generated may consult: http://www.nyu.edu/projects/sciabarra; Gladstein and Sciabarra 1999; Sciabarra 1997.
2. On the parallels between the Marxian and Hayekian critiques of utopianism, see Sciabarra 1995a.
3. Ryle (1966, 153) reminds us: "Dialectically proficient young men [and women too!] can be troublesome hecklers, particularly if their politics are reactionary or revolutionary."
4. Hegel here refers to Aristotle's *Physics*, primarily 4.9.239b31–34.
5. However opposed Austrians and Marxists are, they have always exhibited an ability to ask many of the same questions and participate in many of the same debates—on the transformation problem, socialist "calculation," and so forth. This commonality may be an outgrowth of intellectual, ideological, and pedagogical cross-breeding: Mises and Hayek started out as socialists; Wieser is said to have remained one; Menger's student, Böhm-Bawerk, taught many Marxists, including Bukharin, Bauer, and Neurath (Vaughn 1994, 31). The Misesian philoso-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pher, Hans-Hermann Hoppe, was taught by Jürgen Habermas. The same patterns exist in my own experience; my mentor and colleague, the Marxist philosopher Bertell Ollman, worked as a Volker Fellow for Hayek in Chicago in 1959-60.

6. I do not pretend for a moment that my Austrian colleagues would self-identify with this "dialectical" label. That many of them are practicing dialecticians is, however, quite true, whether they recognize it or not.
7. In Hegel's forms of the syllogism there are three basic groupings of "individual" (I), "particular" (P), and "universal" (U) factors: I-P-U, P-I-U, and I-U-P.
8. This is not to say that Rothbard's work is utterly devoid of dialectical moments; I examine these and other aspects of his work in my forthcoming book, *Total Freedom*. It should be noted that Rothbard moved toward a greater appreciation of the role of culture in his later years, albeit an appreciation fueled by his embrace of paleoconservatism.
9. As I've noted, Rand is not alone here; no thinker in intellectual history can be classified as purely of one methodological orientation.

## REFERENCES

Boettke, Peter J. 1995. "Book Review: Caldwell's *Carl Menger and His Legacy*." *Research in the History of Economic Thought and Methodology* 13: 285–93.

Boettke, Peter J. 1997. "Where did Economics Go Wrong?: Modern Economics as a Flight from Reality." *Critical Review* 11(1): 11–46.

Friedman, Jeffrey. 1997. "What's Wrong with Libertarianism." *Critical Review* 11(3): 407–67.

Gladstein, Mimi Reisel, and Chris Matthew Sciabarra, eds. 1999. *Feminist Interpretations of Ayn Rand*. University Park: Pennsylvania State University Press.

Hampton, Cynthia. 1994. "Overcoming Dualism: The Importance of the Intermediate in Plato's *Philebus*." In *Feminist Interpretations of Plato,* ed. Nancy Tuana. University Park: Pennsylvania State University Press.

Hayek, F. A. [1944] 1994. *The Road to Serfdom*. Chicago: University of Chicago Press.

Hayek, F. A. 1973. *Law, Legislation and Liberty*, vol. 1: *Rules and Order.* Chicago: University of Chicago Press.

Hegel, G.W.F. 1970. *Hegel's Philosophy of Nature*, vol. 1: *Introduction, Foreword and Mechanics,* ed. M. J. Petry. London: George Allen & Unwin.

MacGregor, David. 1997. "It Ayn't Rand." *Critical Review* 11(3): 373–91.

Machan, Tibor R. 1974. *The Pseudo-Science of B. F. Skinner*. New Rochelle, N. Y.: Arlington House Publishers.

Marx, Karl. [1867] 1967. *Capital: A Critique of Political Economy*, vol. 1: *The Process of Capitalist Production*, trans. Samuel Moore and Edward Aveling. New York: International Publishers.

O'Driscoll, Gerald P., Jr., and Mario Rizzo. [1985] 1996. *The Economics of Time and Ignorance*. New York: Routledge.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Ollman, Bertell. 1993. *Dialectical Investigations*. New York: Routledge.
Rand, Ayn. 1961. *For the New Intellectual: The Philosophy of Ayn Rand*. New York: New American Library.
Rand, Ayn. 1995. *Letters of Ayn Rand*, ed. Michael Berliner. New York: Dutton.
Rand, Ayn. 1997. *Journals of Ayn Rand*, ed. David Harriman. New York: Dutton.
Robinson, Richard. 1953. *Plato's Earlier Dialectic*, 2nd ed. New York: Oxford University Press.
Ryle, Gilbert. 1966. *Plato's Progress*. Cambridge: Cambridge University Press.
Sciabarra, Chris Matthew. 1995a. *Marx, Hayek, and Utopia*. Albany: State University of New York Press.
Sciabarra, Chris Matthew. 1995b. *Ayn Rand: The Russian Radical*. University Park: Pennsylvania State University Press.
Sciabarra, Chris Matthew. 1997. "Reply to Critics: *Ayn Rand: The Russian Radical*—A Work in Progress." *Reason Papers* no. 22 (Fall): 25–38.
Sherman, Howard J. 1995. *Reinventing Marxism*. Baltimore: Johns Hopkins University Press.
Vaughn, Karen. 1994. *Austrian Economics: The Migration of a Tradition*. New York: Cambridge University Press.
Wrong, Dennis. 1961. "The Oversocialized Conception of Man in Modern Sociology." *American Sociological Review* 26 (April): 183–93.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# *Rethinking* MARXISM

*A Journal of Economics, Culture, and Society*

The aim of the journal is to stimulate interest and debate over the explanatory power and social consequences of Marxian economic and social analysis. To that end, it publishes studies that seek to discuss, elaborate, and/or extend Marxian theory. The concerns of the journal include theoretical and philosophical (methodological and epistemological) matters as well as more concrete empirical analysis – all work that leads to the further development of a distinctively Marxian discourse. Contributions are encouraged from people in many disciplines and from a wide range of perspectives. It is the editors' belief that Marxian approaches to social theory are important for developing strategies toward radical social change—in particular, for ending class exploitation and the various forms of political, cultural, and psychological oppression including oppression based on race and gender. Research that explores these and related issues from a Marxian perspective are particularly welcome.

**ARTICLES OF INTEREST:** Marx, Fanon, Nkrumah, and the Intersection of Socialism and Radical Feminism, *Kenneth Long* • Marxist Theory and Marxism as a Mass Ideology: The Effects of the Collapse of 'Really Existing Socialism' to West-European Marxism, *John Milios* • Throwing a Dishcloth into the Works: Troubling Theories of Domestic Labor, *Jenny Cameron* Art, Economy, *and the Differentiation of Value*, Roby Rajan

**SUBSCRIPTION INFORMATION**

ISSN 0893-5696, Volume 10, 1998 (4 issues)
Individuals: $33.00; Outside U.S.: $45.00 (surface mail); $55.00 (airmail)
Institutions: $95.00; Outside U.S.: $117.00 (airmail)
Students*: $20.00; Outside U.S.: $27.00 (surface mail); $37.00 (airmail)
*Current I.D. required.

Also available in better bookstores.

**GUILFORD PUBLICATIONS, INC.,** Attn: Journals Dept.
72 Spring Street, New York, NY 10012
Call Toll-Free: 1-800-365-7006, 9 AM to 5 PM EST
CALL: 212-431-9800 • FAX: 212-966-6708
E-mail: staff@guilford.com
Website: http://www.guilford.com

***SAMPLE COPIES AVAILABLE!***
samples@guilford.com


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*David MacGregor*

# REJOINDER TO SCIABARRA

ABSTRACT: *Chris Sciabarra's discussion of the dialectic and its uses in modern social science is most welcome. However, his account of Hegel, and his, and Ayn Rand's, vision of an ideal society, are groundlessly antistatist.*

In November 1998 professional assassins gunned down Galina Starovoitova, "one of Russia's most uncompromising democratic idealists" (Meek 1998, 1). Like Ayn Rand, Starovoitova believed firmly in markets and democracy, and detested ethnic and racial barriers to individual rights. Whether or not she fully accepted Rand's "community of values," there is no doubt that she "was prepared," like Rand, "to change . . . reality itself" (Sciabarra 1998, 297). The St. Petersburg politician's death, writes *Guardian Weekly* correspondent James Meek (1998, 1), may signal "a turning point in Russia's post-Soviet struggle for law and order." Where old Bolsheviks perished at the hands of Stalin, market reformers like Starovoitova may fall beneath the heels of the crime lords.

Rand's three-tiered methodological approach, as expounded by Sciabarra, may help account for the apparent failure of unregulated capitalism in the former Soviet Union. Russia's economic and political realities are conditioned by cultural and individual factors, so that market disruption and the rise of the Russian Mafia may be traced, in Rand's schema, to cultural and personal aspects of the Russian people. The market experiment has faltered, not because of any problems

---

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

David MacGregor is Professor of Sociology, King's College, University of Western Ontario, 266 Epworth Avenue, London, Ont. N6A 2M3.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

inherent to it, but because residues of mysticism, collectivism, and altruism are a miserable heritage of Soviet power.

According to Sciabarra (1998, 285), Hegel's "view of history as the triumph of *Geist*" extends philosophical benediction to the same oppressive state that Rand identified as history's most urgent problem. In reality, however, Hegel is better understood as a radical critic of the modern state form, and a (qualified) supporter of free markets. Hegel's powerful insistence on the irrational character of the state may be unique in the annals of philosophy. Relations between states, he argues in the *Philosophy of Right* (sec. 340) "are on the largest scale a maelstrom of external contingency and the inner particularity of passions, private interests and selfish ends, abilities and virtues, vices, force, and wrong. All these whirl together, and in their vortex the ethical whole itself, the autonomy of the state, is exposed to contingency."

While irrationality characterizes the state at the international level, it also applies to the state's domestic activities. In the classic (and newly translated) *Hegel and the State*, Eric Weil (1998, 79–80) observed that for Hegel, government, like the autonomous human individual, "can choose between good and evil . . . the State, which is *free* to act in a moral fashion, is *free* also to act in an immoral fashion."

Libertarian thinkers such as Rand and Sciabarra, it seems to me, have concentrated on the state as an immoral actor, overlooking tendencies that promise to restore humanity to the process of governance. From Hegel's standpoint, the key problem is not that the state is too powerful but that it is not powerful enough. "At home and abroad," notes Weil (1998, 110), "it is the state of nature in all its violence that prevails. . . . The state which *ought* to be stronger than society, *is* in fact weaker; the *concept* of man has not triumphed and replaced the *representation* of man; freedom has not conquered need."

Unlike libertarians, Hegel considers government the key vehicle for attaining individual freedom. There is no question that the present-day state falls short of the Hegelian promise, but it must still function as an instrument for achieving that ideal. "However inadequate [the State] may be," Weil (1998, 111) suggests, "it is and remains the truth of its era. It will not be anarchy that saves humanity from local conflicts or those between States."

Galina Starovoitova's murder evidently resulted from a struggle between honesty and dishonesty rather than a battle between the market-oriented right and the pro-statist left. She was a victim of wide-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

spread corruption in civil society that also engulfed the state. "One thing is sure," Meek (1998, 1) observes, "none of Starovoitova's allies trusts the investigators. There is a firm belief that an unbroken chain of acquaintances and friends stretches from the depths of the criminal underworld through the law enforcement agencies to the very heights of power." To have any chance of success, Rand's and Sciabarra's (1998, 297) "voluntary and benevolent association of free-thinking individuals" must be anchored in a strong, democratic state capable of disciplining the pulse of evil in human affairs. This is the final lesson of Hegel's dialectical analysis, one that must temper the claims both of the free market and of the overweening state.

## REFERENCES

Meek, James. 1998. "A shot in the heart of democracy." *Guardian Weekly* 159(22), November 29.

Sciabarra, Chris. 1998. "Are We All Dialecticians Now? Reply to MacGregor and Friedman." *Critical Review* 11(3): 373–91.

Weil, Eric. 1998. *Hegel and the State*, trans. Mark A. Cohen. Baltimore: Johns Hopkins University Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# GENDER, I-DEOLOGY

## Essays on theory, fiction and film

Ed. by Chantal Cornut-Gentille d'Arcy and José Angel García Landa

Amsterdam/Atlanta, GA 1996. 466 pp.
(Postmodern Studies 16)
ISBN: 90-5183-969-3 Bound Hfl. 225,-/US-$ 139.50
ISBN: 90-5183-958-8 Paper Hfl. 55,-/US-$ 34.-

Table of Contents: I. THEORY. José Angel GARCÍA LANDA: The Film of Familiarity: Gender, I-deology and Addictive Representation. Angeles de la CONCHA: The Female Body: A Resonant Voice in the Multicultural Scene. JoAnne NEFF VAN AERTSELAER: Fear, Desire and Masculinity. Carmen OLIVARES RIVERA: Women and Religion: A Brief Survey. Beatriz PENAS IBÁÑEZ: Kristeva's *Desire In Language*: A Feminist Semiotic. Perspective on Language and Literature. Francisco COLLADO RODRÍGYEZ: Complexity / Controversy: Some Aspects of Contemporary Women's Studies in America. Olga BARRIOS: Formulating the Aesthetics of African American Women Playwrights: The Resonance of the Black Liberation and Black Theater Movements. Pilar HIDALGO: The New Historicism and Its Female Discontents. II. FICTION. Marita NADAL BLASCO: "The Death of a Beautiful Women Is, Unquestionably, the Most Poetical Topic in the World": Poetic and Parodic Treatment of Women in Poe's Tales. María Dolores HERRERO: George Egerton's "Wedlock": Unlocking Closed Doors, Looking for a Key of One's Own. Lois RUDNICK: Feminist Utopian Visions in the Early 20th Century U.S. Ana ZAMORANO: Adrift on an Unknown Sea: Androgyny and Writing with Particular Reference to *Echo* by Violet Trefusis. Constanza DEL RÍO ALVARO: Misogyny in Flann O'Brien's *The Third Policeman.* Pamela SARGENT: Women and Science Fiction. Isabel FRAILE: The Silent Woman: Silence as Subversion in Angela Carter's *The Magic Toyshop.* Celia FLORÉN: A Reading of Margaret Atwood's Dystopia, *The Handmaid's Tale*. María DEL MAR ASENSIO ARÓSTEGUI: Subversion of Sexual Identity in Jeanette Winterson's *The Passion.* Susana GONZÁLEZ ABALOS: Winterson's *Sexing the Cherry:* Rewriting "Woman" through Fantasy. Susana ONEGA JAÉN: Jeanette Winterson's Politics of Uncertainty in *Sexing the Cherry.* III. FILM. Hilaria LOYO: Dietrich's Androgyny and Gendered Spectatorship. María Dolores ROMERO: Woman's Death and Patriarchal Closure in Fritz Lang's *The Big Heat.* Vickie OLSEN: The Subordination of Gender to Race Issues in the Film Musical *South Pacific.* Juan A. SUÁREZ SÁNCHEZ: The Rear View: Paranoia and Homosocial Desire in Alfred Hitchcock's *Rear Window.* Chantal CORNUT-GENTILLE D'ARCY: Who's Afraid of the Femme Fatale in *Breakfast at Tiffany's?* Exposure and Implications of a Myth. Bárbara ARIZTI MARTIN: Female Spectatorship in *The Purple Rose of Cairo.* Ramón PLO ALASTRUÉ: Gender and Genre Conventions in *When Harry Met Sally.* Celestino DELEYTO: Regulating Desire: Castration and Fantasy in Blake Edwards' *Switch.* Sara Martín ALEGRE: Not Oedipus' Sister: The Redefinition of Female Rites of Passage in the Screen Adaptation of Thomas Harris's *The Silence of the Lambs.* Thelma J. SHINN: Gender Images and Patterns from Novel to Film.

**USA/Canada: Editions Rodopi B.V.**, 2015 South Park Place, Atlanta, GA 30339, Tel. (770) 933-0027, *Call toll-free* (U.S. only) 1-800-225- 3998, Fax (770) 933-9644, *E-mail:* F.van.der.Zee@rodopi.nl

**All Other Countries: Editions Rodopi B.V.**, Keizersgracht 302-304, 1016 EX Amsterdam, The Netherlands. Tel. + + 31 (0)20-622-75-07, Fax + + 31 (0)20-638-09-48, *E-mail:* F.van.der.Zee@rodopi.nl

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Richard A. Epstein*

# THE RIGHT SET OF SIMPLE RULES: A SHORT REPLY TO FREDERICK SCHAUER AND COMMENT ON G. A. COHEN

ABSTRACT: *In* Simple Rules for a Complex World, *I outlined a set of legal rules that facilitate just and efficient social interactions among individuals. Frederick Schauer's critique of my book ignores the specific implications of my system in favor of a general critique of simplicity that overlooks the dangers to liberty when complex rules confer vast discretion on public figures. He also does not refer to the nonlibertarian features of my system that allow for overcoming holdout positions. These "take and pay" rules explain how a system broadly protective of private property responds to well-known two-person (Able-Infirm) hypotheticals of the sort advanced by G. A. Cohen, which are designed to show how claims of self-ownership lend strong support to egalitarian outcomes.*

Frederick Schauer's curious review of my book, *Simple Rules for a Complex World* ("Richard Epstein on Simplicity," *Critical Review* 11, no. 3) is more notable for what it omits than for what it discusses. Professor Schauer takes the part of the inveterate jurisprude for whom conceptual clarity takes priority over the soundness of substantive positions. His penchant for abstraction is apparent in the title of his review: "Does Simplicity Bring Liberty?" In line with this strong philosophical tendency he makes the useful point, to which I

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Richard A. Epstein is James Parker Hall Distinguished Service Professor of Law, University of Chicago Law School, Chicago, IL 60637, telephone (773) 702-9563, telefax (773) 702-0730, e-mail repstein@midway.uchicago.edu.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cheerfully accede, that legal simplicity is not the same as minimal government. If push came to shove, I would choose the latter over the former. A legal rule that says that no one shall build a home on his own land without the approval of the local zoning czar is simplicity itself. Yet this simple rule invites exercises of arbitrary official power that both Schauer and I deplore. So Schauer is also right to say that constitutions cannot be all that simple, given the difficult task they have of allowing, or even promoting, beneficial social actions and blocking tyrannical ones.

What is puzzling about Schauer's review is that, apart from a passing reference to my comments on the rule against perpetuities, he never once mentions the simple rules that I defend and develop. The point of *Simple Rules for a Complex World* was not to urge that any set of simple rules is as good as any other. Rather, its first objective was to attack the conventional view that substantive legal rules must become ever more complex as society does. The conventional view categorically rejects any effort to treat the legal rules suitable for a horse-and-buggy age as appropriate in modern social settings. To refute that view, however, it is not sufficient to state simple rules. One has to defend the operation of the rules within contemporary society. Such was my mission; yet Schauer says nothing about the structure that it produced.

## *The Substantive Simple Rules*

My major task was to identify those simple rules that work well in complex social settings, freely conceding that lots of other simple rules work poorly in any society, simple or complex. Toward that end I developed a framework of six (or seven—I will return to the equivocation in a moment) simple rules that I believe are sufficient to cut through the massive complexity of modern law.

The first of these rules defends the traditional conception of individual autonomy, not as an absolute, but as a baseline from which deviations must be clearly justified. The logic behind this rule is a comparison of the rule of self-ownership to alternative baselines, be they rules that allow one individual to own another, or rules that hold that the talents of any individual belong to the society as a whole (as many contemporary normative theorists contend). In my view, these more complex rules of divided ownership clutter the landscape and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

block many beneficial exchanges of labor and capital that might otherwise take place. Once a system of joint ownership is created, all the owners have to concur before the asset is used or transformed—unless some procedure allows one of them to gain sole ownership of some fraction of the larger whole. The simplicity of an autonomy-based starting point relative to its rivals—what, for example, would common ownership of individual talents entail?—is one source of its enduring strength.

The second simple rule links individuals to property. Here I draw on the basic common-law rule for the acquisition of land and chattels: first possession. The baseline rule is that no thing is initially owned in a state of nature but that land, chattels, and wild animals can be reduced to private ownership when some person takes possession of them. Readers will quickly see the close affinity of this rule to the Lockean labor theory of appropriation, but the two approaches differ in at least one crucial respect. The main function of a first-possession rule is to get things out of the common so that they can become objects of use and trade. The less labor expended to remove things from the common, the better; the first-possession rule thus has strong consequentialist justifications. Its aim is not to postpone my ownership of land until I have cleared it. It is to establish ownership rights *quickly,* so that I know that the land is mine when I start to clear it.

The rules of autonomy and possession establish the initial baseline in labor and property. But what if the things so owned are worth more to nonowners? The third rule, governing exchange and trade, permits the redeployment of labor and capital. It operates from the bedrock premise that voluntary exchange generates gains from trade that are shared by both parties. The principle requires that we police transactions to be sure that they are voluntary, and thus that we guard against transactions tinged by fraud, duress, incompetence, undue influence, insanity, and infancy. But it also has the virtue of allowing successive transactions to take place without limit: what is obtained from one contractual exchange may be disposed of in the next, to the benefit of all concerned. The key role of the third rule is to increase the velocity and security of voluntary transactions, which often is accomplished by requiring some contracts to be in writing or to be recorded in a central registry. While this approach embraces the use of certain formalities, it is utterly inconsistent with the massive forms of regulation (both judicial and statutory) currently imposed on vol-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

untary exchanges. Think only of how the world of employment would look without minimum wage or maximum hours laws, antidiscrimination laws, OSHA, and wrongful dismissal actions, all of which impede exchanges without producing real benefits. Schauer says nothing to defend any of these modern staples against my substantive attack.

The fourth basic rule is the one protecting against force and fraud that plays so prominent a role in standard libertarian theory. But the origins and appeal of this portion of the theory are not so provincial. It is quite inconceivable for even the most devoted Rawlsian to think that anyone behind a veil of ignorance would accept a legal universe in which his personal safety and possession are at the perpetual mercy of those who bear him ill will. That each person must relinquish the use or threat of force against the person or property of another is part of every legal canon, even when it is supplemented and qualified by other rules.

But even on this matter there are choices as to how far the prohibition goes. Deliberate harms are surely covered, and so are most accidental harms. But by what rule? A basic rule of liability might require the plaintiff to prove the negligence of the defendant, and thus might demand that courts and juries assess the costs and benefits of certain actions to decide whether they are negligent or prudent. *Simple Rules*, however, opts for a strict liability system between strangers in which the reasonableness of a defendant's conduct is for him to determine, and in which the legal system judges liability solely on the basis of outcomes: Did the defendant cross into the plaintiff's protected space or not? In those cases where both parties help cause an action, my preference is for legal rules that divide the loss down the middle, rather than for the complex divisions of a system of pure comparative negligence, which allows a jury to assign to each participant whatever percentages of fault it sees fit. Here, the gains from simplification should be apparent.

This fourfold system outlines a libertarian world, and explains why such a world has at least some desirable features. But in his effort to discredit the linkage between simplicity and libertarian thought, Schauer never acknowledges that the next two rules were designed to show the limits as well as the usefulness of libertarian thought. The need for these rules rests on the observation that transactional success in real-world settings must overcome two major obstacles. One is aggression, against which the four rules just outlined offer strong pro-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tection. The second is the breakdown of bargaining when gains between the parties are still possible. Rules five and six address this second problem.

Consider a simple two-party situation where one person must moor at another's dock during a storm; faced with injury or death, the sailor's need to obtain the consent of the dock owner could easily result in massive "holdouts" for large sums. The ensuing bargaining could well produce exorbitant fees (relative to cost)—or death, if no deal is sealed. The fifth rule allows an individual under circumstances of necessity (i.e., imminent peril of life or limb) to take the property of another, but it holds him responsible thereafter for just compensation, measured by its market value in competitive circumstances. This rule is a flat violation of libertarian norms because it tolerates the surrender of property without consent by someone who has committed no wrong. But it protects property (by offering compensation) and overcomes the holdout issue that can easily force libertarianism into disrepute. The rule is capable of generalization to other "bilateral monopoly situations" where each person has only one trading partner with whom he can achieve such gains. Those problems are surprisingly common in modern life: parties may have many choices of mates prior to marriage, but only one partner with whom they can negotiate a divorce. Indeed, virtually any renegotiation of a preexisting contract may face just this problem.

This necessity rule is the private law beach-head of the entire system of takings law, which is the subject of the sixth basic rule: The state may take property for public use, but only if it pays. This rule is enshrined in our own Fifth Amendment, which prevents the taking of private property "for public use, without just compensation." But its proper interpretation is subject to intense dispute. In my view, the takings power is critical in the many cases where coordination between multiple individuals is necessary but is not achievable by voluntary means. Whether we use taxation, regulation, or modification of liability rules, we should seek ways to overcome these coordination difficulties without allowing the expropriation that leads to political theft and social disintegration. It is not possible to conceive of how we could provide public goods from defense to public highways, from police protection to courts, without the use of this power. But the need for localized coercion does not obviate the need for general property protection that the compensation principle supplies.

This strong form of takings protection still leaves room for a police

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

power to combat pollution and other environmental nuisances without compensation: the state need not compensate when it acts as an agent for individuals who could enjoin the conduct of the regulated parties by right, as under the law of nuisance. But just as the takings clause permits strong action against pollution and similar sins, it also places powerful curbs on political bodies that could use zoning laws, for example, as a way to protect entrenched insiders against new arrivals who wish to develop their own lands in the same fashion as the established owners. This view of the takings clause allows one to mitigate some of the dangers associated with the second of the simple rules, that of first possession. While land is not destroyed by premature occupation, species of fish may be: a state rule that limits the catch of all individuals to preserve a species uses the eminent domain power to overcome the coordination problem with respect to wildlife. It also permits the state purchase of land as habitat for animals that face extinction from other threats. The rules should not be understood in isolation, because they work so well in tandem.

This discussion of the first six rules does not address the question of redistribution of wealth by state action. Within a libertarian framework, all government redistribution is a form of theft because it takes from A and gives to B. The charge of theft can, however, be muted if one can show that the overall gains from redistribution are such that both A and B are better off, precisely because each has received something taken from the other—a theme of implicit in-kind compensation that I have discussed elsewhere (Epstein 1985, ch. 14).

Nonetheless, pure programs of redistribution are by definition blocked by the compensation requirement found in rules 5 and 6. What is left, therefore, is the question of whether the differential need for wealth justifies redistribution from some groups to others, even when no compensation is supplied. The explicit justification for this practice depends on the diminishing marginal utility of wealth, such that the transferred dollar really is worth more to the poor man than the rich one. (Wealth diminishes in utility more slowly than any particular good, though, because it has so many different uses.) The prevalence of charitable giving to the needy shows that a principle of redistribution has strong moral resonance. But coerced transactions are another matter altogether. These interfere with the creation of wealth; they stunt the voluntary provision of charitable goods and services; and they create political opportunities for the redistribution of wealth from poor to rich, as in the case of dairy

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

farmers whose price supports come at the expense of the urban poor (among others).

The hard empirical question revolves around the extent to which these practical difficulties doom the theoretical case for income and wealth redistribution. The libertarian prohibition against redistribution makes sense only if we accept the claim that anything less than a categorical prohibition results in an orgy of redistributive policies—a contentious assertion that may be true in some situations but not in others. My own suspicion, generally, is that a society can survive, even prosper, with limited levels of coerced redistribution, but that once some invisible threshold is crossed, matters get far worse than they otherwise would have been—in part because coerced redistribution tends to displace voluntary redistribution, which usually operates at far higher levels of efficiency. So the hard choice, in a sense, is whether to enforce a total prohibition that allows too little redistribution, or let loose a political free-for-all that invites too much.

One way to split the difference is to prevent the costs of redistribution from being forced on a small segment of society. That can be done by allowing redistribution to come from general revenues alone, forcing everyone with wealth and income to feel some portion of the sting. I have genuine doubts as to whether that structural safeguard places sufficient constraints on government mischief. Others might think that it regrettably prevents targeted redistribution. So the approach of *Simple Rules* is cordon off the question of redistribution so that it does not infect the operation of the other six rules.

This summary, in painful brevity, sets out the overall program of the book, which then seeks to apply these six rules to employment law, product liability law, corporate law, and environmental law, all the while fending off other conceptions of the just society raised by critics of this basic libertarian orientation. I only wish that Schauer had explained where he thought the program went wrong and what he would do to improve it. I am happy to concede that lingering difficulties infect any account of legal simplicity, including the one I have offered. But once that point is made, I would be dumbfounded if any impartial observer could invent a definition of simplicity that demonstrates that my proposed legal regime is more complex than the array of laws now in place in any of the substantive areas I discuss. I am hard pressed to think of how any refinement in the definition of simplicity would alter—be it to bolster or to undercut—any of the substantive conclusions that I reach in the book. I would be equally sur-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

prised to learn of how any sensible conception of legal and political liberty could flourish in a legal system in which complex tests, balancing as many as ten factors, give broad discretion to government officials to decide how to mete out both civil and criminal sanctions, and to give fair notice to citizens of what is required of them, whether on matters of taxation or environmental law. It may be that having a set of simple legal rules is not a sufficient condition for liberty. But it surely is a necessary condition. And once the right set of simple rules is identified, the link between legal simplicity and individual liberty becomes firmer still.

## *From Schauer to Cohen*

My unhappiness with Schauer's partial description of *Simple Rules* is only sharpened by reading some of the companion pieces in the same issue of *Critical Review*. Justin Weinberg (1997) and Jonathan Wolff (1997) rely on the conceptual attacks on libertarian thought propounded by the noted philosopher G. A. Cohen, most notably in his *Self-Ownership, Freedom, and Equality*. To my mind these attacks establish little, if anything, to alter the terms of the political and social debate on the soundness of libertarian programs, including those versions of libertarianism that I do not defend.

Generally speaking, the soundness of any set of social institutions depends on some empirical evaluation of the way in which those institutions perform. We are, in a sense, all consequentialists now. Consequentialist inquiry demands more than a close examination of the social purposes that justify some legislative program. It is also necessary to go beyond ends to means, in order to ask what actions self-interested actors might take to frustrate the stated ends. A complete evaluation raises difficult questions of strategic behavior, which can manifest itself in moral hazard, adverse selection, log-rolling, and personal opportunism. Indeed, the occupational niche of lawyers is to reveal the many slips between aspiration and implementation in social programs.

With this in mind, the political arguments with the *least* power are those that seek to dismiss on some deductive or a priori grounds powerful traditions of political thought. Steven Lukes's recent contribution to *Critical Review* rightly took the later writings of F. A. Hayek to task for insisting that social justice is a "mirage." Practical attempts

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to achieve social justice may easily run aground, and Hayek's enduring contribution, as Lukes reminds us, was to demonstrate how the information embedded in market prices cannot be obtained by administrative boards in ways that make central planning of an entire economy workable (Lukes 1997, 76). In one sense, Hayek did his work so well that no traditional socialists survive him. But Lukes is right to denigrate Hayek's conceptual attack on the incoherence of the concept of social justice. As noted above, it is quite plausible for people to point to the diminishing marginal utility of wealth as one good reason for systems of state redistribution. Indeed, Hayek himself supported the right of all individuals to have state protection against extreme privation.[1] If social justice is a mirage, then his concession in that direction is as unsound as the more ambitious programs of his philosophical rivals. Hayek does not win the political debate on redistribution by fiat.

The eagerness to resort to conceptual killings is not, however, confined to pro-market, limited-government authors. My chief objection to Cohen's influential work is that it makes the same mistake from the opposite direction. He purports to undermine the coherence of libertarian thought by contesting the conceptual relationship between freedom and property. To show the defects of this conceptual move, let me explain how my approach in *Simple Rules* grapples with one well-known parable from Cohen's work—that of Able and Infirm, each of whom is treated as a self-owner, but who together are stipulated to own the world jointly. For Cohen, the point of this example is to show that Infirm's holdout position over material resources deprives Able of any bargaining advantage that he might have with respect to these material resources. (Presumably, Able could not even stand on this earth without Infirm's consent.) The upshot, Cohen claims, is that Able must split the proceeds roughly equally with Infirm—a far cry from the outcome in a Lockean world, where property rights are acquired by mixing labor with natural resources. Individual self-ownership, Cohen concludes, is consistent with egalitarianism, and offers no special justification for any Lockean inequality.

Yet this is a case where the choice of examples reveals more about the philosophical preconceptions of the author than it does about the world. Desert-island hypotheticals should not blind us to the fact that it makes no sense to speak of regimes of property rights in a world in which there are only two people. The great advantage of property

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

systems is that they require all individuals but one to forbear from the use of a single plot of land, thereby giving the owner the opportunity to put it to productive use without having first to transact with thousands (or millions) of unnamed individuals who would otherwise have equal claims to it. The clear transactional advantages of private property simply disappear when (in defiance of all principles of evolution) we stipulate that the world (or even some remote island) is populated by only two people. No matter what the original allocation of ownership, the two are surely going to have to bargain and cooperate with each other, for otherwise both might perish. Given the lack of other sources of companionship, their incentives to act cooperatively are likely to be rather great, and by definition they cannot go to court if they fail to agree on some division of the whole. So why worry about this example in developing a comprehensive legal regime?

Suppose that we put these mundane questions of realism and enforcement to one side. The next question is, how does one defend Cohen's assumption that the asset in question is owned jointly? The alternative position—one adopted by virtually every legal system, ancient or modern—is that land in a state of nature is unowned, and thus acquired by initial occupation, as noted in my second rule. Under this rule of occupation, Able gains an enormous advantage over Infirm (as Diligent gains over Lazy in similar circumstances) because Able's greater energy will usually allow him to occupy larger and better portions of land without Infirm's cooperation. The first-possession rule, by knocking out the implicit hold-out advantage created by joint ownership, thus has the advantage of putting land into use far quicker than would otherwise be the case. This point was not lost on Locke, who noted that in a society with many individuals, everyone would starve if each had to gain the consent of all others before he could occupy or cultivate any portion of the land.[2] Cohen's assumption about the initial distribution of rights may look plausible in a universe of two individuals. But when the number of persons is large, the coordination questions are insuperable and the blockade positions lead not to equality of wealth, but to mass starvation.

Yet let us suppose that in the two-person world we do have joint ownership, as Cohen stipulates. Within a pure libertarian world (one governed by the first four rules alone), the only way that Able can obtain access to any of nature's riches is to share them with Infirm. But once we take into account the fifth and sixth rules, it no longer

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

follows that mutual consent is the only possible way to dissolve the original joint ownership, just as it is no longer the only way to obtain a divorce. Rules 5 and 6 (which take much the same form in a society with only two people) allow one person to break from the other in order to avoid just this kind of holdout problem under narrow conditions of necessity. With partition, Able may now claim half (by value) of the island as his own, and leave unlucky Infirm to his own devices—a solution that could well generate more for Infirm than a rule that assigns ownership to the first possessor, under which Infirm is likely to come up short. At this point, Infirm will have to enter into cooperative ventures with Able, a task that is more difficult in a two-person world than one with thousands of people, where competitive conditions make contracts for wage labor (or the sale of real estate to third parties) quite easy even for those who are infirm. Stated otherwise, as we move from two people to some very large number of people, the holdout problems in coordination games that require unanimous consent get progressively larger, while bilateral contracts (for the exchange of labor or land) become progressively easier to organize.

These cannot, I think, be easily dismissed as lawyers' musings. All societies have rules that deal with joint ownership of private property, and while these differ a little in their details, none of them allows one owner to bar the use of jointly owned property by others. Rather, all systems have rules that allow for joint occupation of such property, or allow one owner either to force a partition of the land or (in a world with more than two people) to put the property up for sale and divide the proceeds among its joint owners.

The legal rules governing these divisions necessarily take into account precisely the situation that Cohen contemplates: initial joint ownership of an asset that one but not the other co-owner then improves by labor. The usual solution is to award that co-owner the reasonable value added by his labor (which could not be determined in a two-party world because labor could not be priced in the absence of a market). Thereafter, the appreciation in initial capital value can be divided in accordance with the appreciation (or depreciation) of the underlying asset. The holdout problem is avoided: the asset is usefully redeployed without any form of redistribution between the parties.

This line of argument has profound ramifications for Cohen's commonly repeated claim that a libertarian theory cannot rest on any

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

consistent notion of "freedom" when the freedom of the owner to exclude the outsider necessarily limits the freedom of everyone else to use the owned property. Who could possibly disagree with that linguistic conclusion? Or think that it is entitled to any weight whatsoever, given that the same objection applies to murder and rape? The defense of a system of private property does not rest on any such deductive proposition. Rather, it rests on the belief that those who sow should reap, in order to create the correct incentives for investment. It assumes that the anarchistic view that lets us all do exactly what we want, when and where we want it, is unsustainable. Strong private property rights generate greater gains that others can share by contract or gift: the costs of exclusion are real, but they are offset by far greater benefits.

But this view, however forceful with respect to land, is subject to powerful limitations once we think hard about the critical role that various forms of common property play in every legal system. Waterways, fisheries, beaches, oil and gas pools, communication and transportation networks, and public utilities are all mixtures of common and private property. A complete theory of property has to explain why water is subject to common ownership (so that private dams cannot block rivers, even though some water can be removed from rivers for farming); why public utilities have duties to serve their customers at reasonable rates, but should be protected against confiscatory rate regulation; why infrastructure should be financed by certain kinds of special assessments; and why some agrarian lands should be held in common for some seasons of the year and privately operated in the others.

Developing accurate descriptive theories (on which all normative work depends) requires a careful assessment of the advantages and inconveniences produced by small variations in legal rules. Systems of common property do, however, share one feature with those of private property: their internal operation cannot be understood by appealing to some undifferentiated claim that they advance or retard a crude notion of individual freedom. Systems of common ownership, like systems of private property, create correlative rights and duties. So the task is to develop, even within the alternative regimes of common property, the system that promises to maximize the net advantage of the participants in it.

The irreducible role of common property helps shape the proper domain of legal and political theory. The strict libertarian who

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

thinks that the only problem worth worrying about is force and fraud overlooks the corrosive influence that holdout situations (and the bargaining power they create) can have on the shape of legal regimes. By seeking to minimize the wrong quantity, they incorrectly assume that all external things are waiting to be privatized by individual action. Accordingly, they have no conception of why some property rights can be in stable equilibrium in common (or partially common) form. The right question regards the optimal distribution of collective and common property. This question in turn can only be asked if we know what dangers must be minimized if social welfare is to be maximized. The libertarian sees only the risk of force and fraud. He casts his net too narrowly. The fuller picture tries to minimize the sum of errors from force and fraud as well as those from the incomplete coordination of common resources. These two goals sometimes conflict.

The same charge of conceptual blindness can be lodged, however, against Cohen and his supporters, such as Weinberg and Wolff. As committed socialists, they are so blinded by their preoccupation with redistribution that they first underplay the dangers of force and fraud (in both private and public hands) and then miss the institutional and social dynamics that lead first to the dominance of one form of private ownership in some contexts (land, labor chattels); and then to the dominance of common ownership in others (water, air, highways, public utilities). And they pay almost no attention to the standard risks identified in public choice theory: the dangers of official misbehavior by self-interested public figures. Rules 5 and 6 allow us to understand why one form of property will not achieve full dominance over the other. This issue has absolutely nothing to do with the redistribution of wealth based on need. The case for redistribution has to stand, or fall, on its own merits, for it is quite possible to form societies that have heavy dosages of common property with no redistribution at all.

My disappointment in reading Schauer's review is that it does not give the reader the slightest glimpse as to whether my basic project has succeeded or failed in its intended mission. My key criticism of Cohen's work is that it ignores the richer theory of which the libertarian streak forms but one essential component. These concerns are brought home by the recent issue of *Critical Review*, whose readers have been exposed to multiple refutations of single, traditional brand

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of libertarian thought that should have been abandoned long ago as a comprehensive approach.

## NOTES

1. "There is no reason why in a free society government should not assure to all protection against severe deprviation in the form of an assured minimum income" (Hayek 1976, 87).
2. "And will any one say he had no right to those acorns or apples he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, men had starved, notwithstanding the plenty God had given him" (Locke, *Two Treatises of Government,* II.28). Note that Locke treats the acorns as being owned in common, in opposition to the Roman and common-law rule that treated it as a *res nullius*, and not a *res commune.*

## REFERENCES

Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality.* Cambridge: Cambridge University Press.

Epstein, Richard A. 1985. *Takings: Private Property and the Power of Eminent Domain.* Cambridge, Mass.: Harvard University Press.

Hayek, F. A. 1976. *Law, Legislation and Liberty,* vol. 2: *The Mirage of Social Justice.* Chicago: University of Chicago Press.

Lukes, Steven. 1997. "Social Justice: The Hayekian Challenge." *Critical Review* 11(1): 65–80.

Schauer, Frederick. 1997. "Richard Epstein on Simplicity." *Critical Review* 11(3): 393–406.

Weinberg, Justin. 1997. "The Libertarian Diaspora." *Critical Review* 11(3): 323–43.

Wolff, Jonathan. 1997. "Freedom, Liberty, and Property." *Critical Review* 11(3): 345–57.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Am Feallsanach*

# LOCKE AND LIBERTARIAN PROPERTY RIGHTS

ABSTRACT: *In his "Freedom, Self-Ownership, and Libertarian Philosophical Diaspora," Justin Weinberg attempts to show, by using arguments from G. A. Cohen, that philosophical defenses of libertarian natural rights are doomed to failure, because they are either circular (by basing libertarianism on the value of "freedom") or invalid (by basing libertarianism on a self-ownership premise that actually leads to some form of egalitarianism). In fact, however, a natural-rights libertarianism based on the self-ownership premise is not inconsistent if it holds that the earth is initially unowned, rather than collectively owned by all humanity. Under this thesis, the self-ownership assumption* may *lead to libertarianism, though other hurdles (such as social-contract theory) stand in the way. Finally, ordinary usage of the term "freedom" permits its application as a moralized concept to a political philosophy that has been demonstrated true.*

In his article, "Freedom, Self-Ownership, and Libertarian Philosophical Diaspora" (*Critical Review* 11, no. 3), Justin Weinberg seeks to impale natural-rights defenses of libertarianism on the horns of a dilemma. Either libertarians defend their philosophy by begging the question, or they do so by accepting premises that lead, not to laissez faire, but to some form of egalitarianism of outcome.

Weinberg, taking his argument from G. A. Cohen, shows that justifying libertarianism on the grounds that it is the only political philosophy

---

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Am Feallsanach, an independent scholar, can be reached through the *Critical Review* Editorial Office, P.O. Box 380015, Cambridge, MA 02238.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that fully protects individual freedom is either demonstrably unsound or circular. Libertarianism requires property rights to be defended—through force if necessary. Libertarianism thus obstructs some "freedoms," if this term is understood in a morally neutral sense. A libertarian legal system is therefore not uniquely protective of freedom. It would be useless, furthermore, for a libertarian to switch tactics and defend a "moralized" definition of freedom, such that freedom is the enjoyment of a moral right. For what does this moral right depend on? If we say "freedom," we have successfully completed a circle (Weinberg 1997, 328–29).

To provide a solid foundation for the libertarian theory of rights, some have turned to the self-ownership thesis, according which individuals own themselves and those parts of the external world to which they apply their labor. The Lockean-libertarian version of this thesis holds that individuals appropriate property from an original unowned state with their labor and then may dispose of this property as they see fit, without violating the property titles similarly acquired by others.

Weinberg denies that the self-ownership thesis, properly applied, leads to libertarianism. He does so by means of a simple example drawn from Cohen. In a world with two persons, Able and Infirm, who own the world jointly, neither person could appropriate any external resource without the permission of the other. "Infirm, then, would use his co-ownership of all resources to allow Able to produce anything at all only if Able agreed to produce enough to sustain the both of them" (Weinberg 1997, 332). And here we have the basis for income redistribution or even strict equality in property.

To avoid this conclusion, libertarians may try to make their concept of self-ownership more substantive. For example, they may claim that Able has a right to a certain degree of autonomy and may not be held hostage to the demands of Infirm. But the autonomy route also leads to redistributive liberalism, which guarantees each individual enough material means to pursue an autonomous life plan without facing the (purely formal) choice of working or starving (Weinberg 1997, 333).

Lockean libertarians have usually defended the formal self-ownership thesis rather than the more robust versions of the proposition, and for good reason. While it is clear that the substantive self-ownership and autonomy routes lead away from libertarian natural rights, it is in fact not the case (contra Cohen and Weinberg) that the formal self-ownership thesis is inconsistent with libertarianism. Weinberg and Cohen have reached this conclusion only by inserting a subtle stipulation: that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the world in its original state is jointly owned by all human beings. This is not the Lockean-libertarian position. For a libertarian Lockean, the world is originally *unowned*. Joint ownership of property can occur only through express compact. For a Lockean libertarian adhering to the purely formal self-ownership thesis, if the world became jointly owned through compact, then Able would have nothing to complain about.

But if the world is unowned in the beginning, then Able does not need Infirm's consent to appropriate property so long as the earth remains unowned. Locke himself argues along these lines in the *Second Treatise* (sec. 28):

> If such a consent as that [of all humankind] was necessary, man had starved, notwithstanding the plenty God had given him. . . . Thus the grass my horse has bit, the turfs my servant has cut, and the ore I have digged in any place where I have a right to them in common with others become my property, without the assignation or consent of anybody.

While Locke does use the phrase "in common" to describe the ownership of the world, we may take it, from this passage and others, that he means that God has given the world to human beings in *general*: but it is not the case for Locke that each individual enjoys joint ownership of every single material particle in the world with every other individual.

Weinberg might reply to this deontological interpretation of Locke that Locke's justification of the earth as originally unowned is consequentialist. Locke argues that if the earth were jointly owned, requiring the consent of all human beings to any appropriation (not just taking food to eat, but even inhaling air), the consequences would be disastrous. Here, however, it is appropriate to take consequences into account, because Locke is working, not on the level of moral principle, but of intuition. Consequences are appropriate material for the intuition to work on, even for a deontological moral theory. Intuition necessarily enters the argument here, because what is at issue is a contingent state of the world (Is it unowned or jointly owned?) that can be determined only a posteriori, not a priori (albeit not through the usual methods of empirical observation).

In any event, my task has been not to defend the libertarian theory of natural rights as true, but only to show that it is not subject to the devastating flaws that Weinberg attributes to it. Whether one accepts Locke's version of the story or not, at least one should realize that it is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

not self-contradictory or circular. While I admit that Locke's mixing-of-labor hypothesis has some flaws, not every libertarian self-ownership argument need depend on this version of original acquisition. Any self-ownership argument that maintains that the world is initially unowned at least avoids the defects that Weinberg and Cohen attribute to all self-ownership arguments and has the potential, if it avoids other pitfalls, to generate uniquely libertarian conclusions.[1] The point is this: natural-rights libertarian scholarship is not dead in the water. The issues surrounding self-ownership arguments are complex and require thorough treatment.

Finally, I would like to address briefly Weinberg's and Cohen's proposed restrictions on the legitimate use of the word "freedom." Once someone has determined which theory of property appropriation is correct, it seems that this person is then in a position to judge which political philosophy deserves the moniker "philosophy of freedom." Although no political philosophy can be justified on the basis that it protects maximum freedom, we can apply the predicate "protecting or promoting freedom" recursively to a philosophy that has been justified on other grounds, because then we would have a true theory of property rights (I'm supposing) and thus a clear way of determining which actions violate those rights and therefore the "freedom" of the rights-bearer. To apply the term in this way is to use a moralized definition of the term, but here the moralization has been justified.

Cohen uses a Wittgensteinian argument to oppose the use of the word in this way (see Weinberg 1997, 327–28). According to Cohen (and Weinberg agrees), the ordinary use of the word "freedom" has nothing to do with its moral content. I disagree. Ordinarily, we would say that the Soviet Union and the Third Reich were regimes that particularly restricted freedom. If we were using the morally neutral definition of the term, we could not say this. These regimes restricted the freedom (in the neutral sense) of some but gave more freedom to others (government officials were free to indulge their power lust). One ordinary use of "freedom," however, does contain moral judgment, as we can see through the standard denunciation of totalitarian regimes as "unfree." Weinberg and Cohen would seem to argue that we could not call Pol Pot's Cambodia any less free than the United States, a position I find in opposition with ordinary usage, which contains implicit moral judgments about the legitimacy of certain governments. Therefore, I conclude that if libertarianism were shown to be true (on self-owner-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ship grounds, perhaps), we could call it the "philosophy of freedom." And the same goes for Marxism.

## NOTES

1. Therefore, I would attack Option 1 of the three-horned beast Weinberg conjures (334). "What fundamentally matters is formal self-ownership." But it does not follow that "property egalitarianism is acceptable." If the world is initially unowned, then property egalitarianism is unacceptable unless achieved through consent. Here libertarianism as a political program may face obstacles, if there is indeed a social contract.

## REFERENCE

Weinberg, Justin. 1997. "Freedom, Self-Ownership, and the Libertarian Philosophical Diaspora." *Critical Review* 11(3): 323–44.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# new german critique

*an interdisciplinary journal of german studies*

*editors:* David Bathrick, Biddy Martin, Miriam Hansen, Andreas Huyssen, Anson G. Rabinbach and Jack Zipes

***New German Critique*** is the first American journal to develop a comprehensive discussion of German politics, social theory, art, and literature on an international level.

**Number 67** **Winter 1996**


## *The Legacies of Anti-Fascism*


**Anson Rabinbach:** *Legacies of Antifascism*

**Denis Hollier:** *Desperanto*

**Mary Nolan:** *Antifascism under Fascism*

**Frank Stern:** *The Return to the Disowned Home*

**Geoff Eley:** *Constructing Democracy in Postwar Europe*

**Leonardo Paggi:** *Antifascism in Post-1945 Italy*

**Antonia Grunenberg:** *Dichotomous Political Thought in Germany*

**Dan Diner:** *On the Ideology of Antifascism*

**David Bathrick:** *Anti-Neonazism as Cinematic Practice*

**Stefan Senders:** *Legal Dimensions of Inclusion in Germany*

**Adam Daniel:** *Bourgeois* Öffentlichkeit *and Early German Cinema*



Personal one-year subscriptions cost $30 in the US and $34.50 elsewhere. One-year institutional subscriptions cost $70.00 in the US and $80.50 elsewhere. Make checks payable in US funds, drawn on US Banks. Back issues are $13.00 each. Institutions pay $30.00. All back issues are still available. Send all correspondence to:

***Telos Press, 431 E. 12th Street, New York, NY 10009***

tel: 212-228-6479



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Justin Weinberg*

# SELF- AND WORLD-OWNERSHIP: REJOINDER TO EPSTEIN, PALMER, AND FEALLSANACH

ABSTRACT: *G. A. Cohen's argument against the claim that respect for self-ownership entails libertarianism features the imaginary example of "Able and Infirm." Richard Epstein, Tom Palmer, and Am Feallsanach criticize the example, but fail to rescue libertarianism from Cohen's attack. This is due to a misunderstanding of the role the example plays in Cohen's argument, and to a false belief that the initial ownership status of the world is important for resolving disputes in political philosophy.*

> The trolley car is speeding down the hill, clearly out of control. If it continues along the track, in just a few moments it will run over and kill five persons who you see are stuck in its path. Fortunately, you are standing by the track switch. You can pull the lever and divert the trolley from the main line onto the spur track. But alas, there's a person on the spur track, too. You can see her tying her shoes there. If you pull the lever, you will send the trolley hurtling toward her, assuring her death. What should you do: nothing, and let the five people be killed, or pull the lever, killing the one?

This is the infamous "trolley case" devised by Phillipa Foot and familiar in one form or another to most anyone who has taken or taught

---

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Justin Weinberg, Department of Philosophy, Georgetown University, Washington, DC 20057, telephone (202) 333-1990, telefax (202) 687-4493, e-mail weinberj@gusun.georgetown.edu, thanks Matthew McAdam, G. A. Cohen, and Jeffrey Friedman for their comments on an earlier draft.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

an introductory course in moral philosophy. It is designed to test competing intuitions about the importance of intentions, the significance of consequences, and the distinction between "acting" and "letting happen." Typically, though, what it ends up testing, at first, are students' creative thinking skills, since many of them view the purpose of the exercise as trying to avoid the case's dilemmatic character—a goal usually attempted by disregarding the case's implied stipulations. Their suggestions for doing this range from shouting at the people on the track to move, to pulling the lever only halfway so as to derail the trolley, to jumping onto the trolley as it rushes by in order to bring it under control, and so on.

Whatever creative virtues they may display, such responses are plainly futile and misguided. They are futile since the case can be adjusted or enhanced with various stipulations in order to retain its problematic nature (e.g., the people on the track cannot hear you, the track switch cannot stop halfway across, the trolley's breaks and steering are broken beyond repair). They are misguided because the point of considering the case is not to sidestep its force or deny its stipulations, but to confront and grapple with the challenging questions it poses.

These comments apply to nearly any thought experiment—including the one of Able and Infirm, dreamt up by G. A. Cohen and critically discussed in this issue of *Critical Review* by Richard Epstein, Tom Palmer, and Am Feallsanach. Their responses to the case of Able and Infirm have much in common with the initial responses of some students to the trolley case. The "solutions" they offer to Cohen's example, like the supposed solutions to the trolley case, are largely futile and misguided. I explain why this is so below, giving particular attention to a question that Epstein, Palmer, and Feallsanach each thinks is important: Was the world initially unowned or instead jointly owned by all? I will show why this question is unimportant, and why we should stop asking it. But first I will review what is important about the Able and Infirm example and what it teaches us.

## *Learning from Able and Infirm*

Instead of reproducing the argument in which the Able and Infirm example features prominently, I present a simplified version below. For the original argument I refer readers to the relevant section of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Cohen's book (Cohen 1995, 94–102), or the summary of it in my essay on his book (Weinberg 1997, 331–33). One thing to keep in mind is that the example is not the argument; it is only one part of the argument. This is important because the argument as a whole might remain intact despite the presence of what some may perceive as defects in the example. Before I discuss some of the alleged defects, though, let me state what the antilibertarian lesson of Cohen's argument is. This is best approached by first stating what the lesson of his argument is not.

The lesson of Cohen's argument is not that (a) joint ownership of the external world combined with the self-ownership of its inhabitants (in the example, Able and Infirm) yields strict equality of resources. The lesson is not that (b) joint-ownership of the world is desirable. Nor is the lesson that (c) formal self-ownership is incompatible with libertarianism. Yet (a), (b), and (c) are critical targets of Epstein, Palmer, and Feallsanach.[1] This would be understandable if the success of Cohen's argument required the truth of (a), (b), or (c), but it does not.

The lesson to be learned from Cohen's argument is that libertarianism alone does not follow from self-ownership: a variety of nonlibertarian alternatives do, too. In other words, libertarianism cannot be defended by claiming that self-ownership entails it, since self-ownership entails libertarianism no more than it entails various liberal or socialist orders. Cohen goes about showing this by presenting us with, and then considering and commenting on possible libertarian reactions to the example of Able and Infirm. But the point can be made without the complicating features of that example.

Let us suppose that everyone in "Nolockea" is a self-owner in the way Able and Infirm are. That is, they each have rights over themselves that normally come with owning something, much like the rights that a slaveholder would have over a slave. And, as in the world of Able and Infirm, the external world of Nolockea and its resources are jointly owned by its inhabitants. What kind of place would Nolockea be? Not a place many would want to live in. As Epstein, Palmer, and Feallsanach each claim, and as Locke himself points out, the results of this combination of self-ownership and joint world-ownership would be disastrous. No one could do anything without the consent of every other inhabitant. If there were more than a few people in Nolockea, it is hard to imagine much getting done, or even much being allowed to get done. Nonetheless, Nolockea is a world,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

no matter how unpleasant or short-lived, in which we have self-ownership without libertarian institutions such as private property. That is enough to show that libertarianism does not necessarily follow from self-ownership.

Now there are two objections the libertarian can make here. The first challenges the quality of the self-ownership of the Nolockeans. The second claims that this argument unfairly ignores the Lockean-libertarian's theory of property. However, neither objection succeeds in rescuing a libertarianism founded on self-ownership.

The first objection is the one that Cohen imagines a libertarian making against Able's self-ownership. Since all activity uses some resources (or at the very least takes up space), and these things are jointly owned by everyone in Nolockea, one must get everyone else's approval before doing anything. The libertarian might therefore object, "What is the point of owning myself if I can do nothing without the agreement of others?" (Cohen 1995, 98). She might argue that when libertarians talk of self-ownership, they are not referring to the Nolockeans' truncated version of self-ownership, which entitles them only to refuse others' commands, but to something more robust. Indeed, though everyone in Nolockea has legal title over herself, that is, *formal* self-ownership, it is clear that the Nolockeans cannot do the kinds of things that libertarians envision self-owning individuals as able to do, such as choosing how to live their own lives and realizing their own ends and conceptions of themselves (Nozick 1974, 334). They might even have to work to support others, as Able does. So the first objection is that Nolockea cannot stand as a counterexample to libertarianism since the self-ownership of the Nolockeans is not the self-ownership on which libertarians base their political doctrine.

This objection, though, does not help libertarianism. This is because it is easily imaginable that some of the propertyless poor in the laissez-faire capitalist society advocated by libertarians will be just as badly off as anyone living in Nolockea. Like the Nolockeans, they "can do nothing without the agreement of others." If this means that the Nolockeans are not self-owners in the libertarian sense of the term, then neither are capitalism's poorest. But if capitalism's poorest are not true self-owners, then libertarianism, which endorses capitalism, cannot be defended on the grounds that it respects self-ownership.

Seeing the bind she is in, the libertarian might say that the formal self-ownership shared by the Nolockeans and capitalism's poorest is in

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

fact "real" self-ownership. But that is the same as withdrawing the initial objection, leaving the conclusion—that self-ownership is compatible with a variety of nonlibertarian political orders—intact.[2] The libertarian might seek to avoid this dilemma by arguing that capitalism's poorest are not as badly off as the Nolockeans. I showed (Weinberg 1997, 333–34), however, why this move will not rescue the thesis that self-ownership leads to libertarianism, since it relies on values (e.g., autonomy) that are likely to be better realized via nonlibertarian mechanisms, such as redistributive taxation.

Before I address the second objection to Nolockea, let me pause to show how some of the alleged defects of the Able and Infirm example are rendered immaterial by my simple reconstruction of Cohen's argument. Palmer argues that the Able and Infirm example fails because it does not establish that (a) joint ownership of the external world combined with the self-ownership of its inhabitants yields strict equality of resources. In particular, Palmer claims that Cohen fails to show that (a1) unequal division of jointly owned resources is irrational and that (a2) unequal division of jointly produced output is irrational. Notice, though, that the success of the Nolockea version of the argument against libertarianism does not depend on (a) at all. Strict equality is not stipulated as a feature of Nolockea, nor is it posited as a likely bargaining outcome among the Nolockeans, yet Nolockea succeeds in confronting libertarians with a dilemma. Since Nolockea is simply a variation on the Able and Infirm story, this suggests that the success of the Able and Infirm version of the argument also does not depend on (a). It would be sufficient for that argument's success if the combination of self-ownership and joint world-ownership led to *any* of a variety of things besides strict equality that are incompatible with libertarianism—and it does. Palmer himself admits this when, in his discussion of (a2), he writes, "All that we can say with certainty is that, given Cohen's assumptions, Infirm will receive at least the minimum necessary to sustain her, as she would not under any circumstances agree to less" (Palmer 1998, 236). If this is true, then self-ownership is compatible with something libertarianism is not: a guaranteed minimum income. This leads the libertarian to the dilemma reviewed above. That is enough to show that the argument does not depend on the truth of (a2). The same kind of argument can be applied to (a1), showing that if division of pre-production resources occurs, it will be subject to an antilibertarian welfare condi-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tion. Alternatively, we could rule out such division of resources as a violation of the example's stipulation that the world is jointly owned.

If the truth of (a), (a1), and (a2) are not relevant to the success of Cohen's argument against libertarianism, why does Palmer insist on objecting to them? The answer is that Cohen sometimes construes his argument not merely as a negative one against a libertarianism grounded on self-ownership, but also as a positive one in favor of the thesis that self-ownership is compatible with equality of condition (e.g., Cohen 1995, 14). What I have shown, though, is that the success of the first argument is independent of the success of the second. Palmer's criticisms of Cohen's positive argument leave untouched the negative conclusion that self-ownership does not demand libertarianism.

## *The Question of World-Ownership*

The second objection to Cohen's argument is that it ignores an important aspect of Locke's property theory, namely that the world was initially "unowned." In this vein, Epstein (1998, 314) asks, "How does one defend Cohen's assumption that the asset in question is jointly owned? The alternative position . . . is that land in a state of nature is unowned." Palmer (1998, 243) declares: "What is unargued for by Cohen . . . but is of dubious plausibility, is the idea that every resource other than our own persons should be considered the joint property of all human beings." And Feallsanach (1998, 320) writes that Cohen's arguments work "only by inserting a subtle stipulation: that the world in its original state is jointly owned among all human beings. This is not the Lockean-libertarian position. For a libertarian Lockean, the world is originally *unowned*."

These remarks do not even begin to undermine Cohen's argument. They merely challenge a stipulated condition in Cohen's hypothetical example. In that sense they are the equivalent of responding to the trolley case with "How do you defend the assumption that the trolley will actually hit the people who are on the track? After all, people usually jump out of the way of approaching trolleys."

Epstein, Palmer, and Feallsanach's complaint would only be relevant if the point of Cohen's argument had been to defend something like the following propositions: (b) joint ownership of the world is desirable, or (b1) initially, the world was jointly owned by all rational

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

beings. But his argument is no more about joint ownership of the world than the trolley case is about trolleys. The argument is about whether self-ownership leads exclusively to libertarianism. All sorts of hypothetical scenarios might be helpful in determining this, including scenarios (such as Able and Infirm and Nolockea) that include among their stipulations that the world is jointly owned. One could detail the negative consequences of joint world-ownership, as Palmer and Feallsanach do, or highlight the utilitarian advantages of private, several property, as Epstein does, but these findings do not affect the force of Cohen's argument any more than the relative safety of air over rail travel affects the force of the trolley case.[3]

Palmer (1998, 245) complains that Cohen fails even to "offer any good reason as to why joint ownership should be seriously entertained at all," and that Cohen hardly offers an "*argument* on its behalf." But Cohen is not arguing on behalf of joint world-ownership. He himself says that such an arrangement demands an "unacceptable sacrifice of autonomy" (Cohen 1995, 15). Cohen discusses joint world-ownership not because he believes (b) or (b1)—he does not—but because the possibility of joint world-ownership exposes the compatibility of self-ownership with nonlibertarian institutions, contradicting the familiar libertarian refrain that self-ownership entails libertarianism. The point is to rebut this libertarian claim, not to propose that the world should be jointly owned.

Thus, there is simply no need to defend the joint ownership stipulations of these examples. Despite this, I suspect that some readers will still believe that the original ownership status of the world is relevant to the success or failure of libertarianism. This is clearly Feallsanach's view. He writes: "Any self-ownership argument that maintains that the world is initially unowned at least avoids the defects that Weinberg and Cohen attribute to all self-ownership arguments and has the potential, if it avoids other pitfalls, to generate uniquely libertarian conclusions" (Feallsanach 1998, 322). The hope appears to be that if we could just show that the world was initially unowned, then a libertarianism based on self-ownership would stand a chance—provided that there is some way for the initially unowned world later to become owned. So how does one determine that this is an accurate account of the initial ownership status of the world?

What is this question even about? One possibility is that it is really about the actual status of the world when it came into existence. On this view, Epstein, Palmer, and Feallsanach would be making an *histor-*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*ical* claim. But how would we go about establishing its validity? We will not find the answer in any history book. The world did not come into being with a deed and a user's manual. Some may appeal to religious texts, but these are far from conclusive, to say the least. Others might follow Feallsanach (1998, 321) and invoke Locke's claims that God gave the world to humans "in common" (*Second Treatise*, §25), not in the sense of joint ownership, but for later homesteading. However, Locke had no more evidence for this as an historical claim than we do, which is to say he had none. Palmer (1998, 244) appeals to the authority of Pufendorf, who, he says, "notes" (as if it were an ordinary fact one would simply take note of) that "'*it is plain* that before all human agreements there was a communion of all things. Not a positive communion, of course, but a negative one'" that allows for later, private acquisition (Pufendorf, quoted in Palmer 1998, ibid., my emphasis). Unfortunately, this is not at all "plain," and it is unclear why we should accept Pufendorf as an authority on the issue in the absence of any independent evidence.

It is doubtful that, upon reflection, Epstein, Palmer, and Feallsanach would take themselves to be making an actual historical claim. That still leaves us wondering what it is they could be referring to when they talk about "the world in its original state" (Feallsanach 1998, 321). Perhaps I am being too literal. Perhaps the point of the inquiry is not to determine the *actual* original state of the world, but to direct us to treat the world *as if* it were initially unowned or jointly owned. But if this is the case, then the debate loses its matter-of-fact character and takes on an explicitly normative quality. We can start to ask for *reasons* why we should treat the world *as if* it were initially one way or another.

There are three kinds of reasons that Epstein, Palmer, and Feallsanach offer in support of the claim that we should treat the world as if it were initially unowned. The first is tradition. Epstein (1998, 314) writes that "virtually every legal system, ancient or modern" treats the world as if it were initially unowned. We can ask, though, why we should follow this tradition. One answer—that the tradition provides our best approximation of the actual initial state of the world—is ruled out, since, as we saw above, we have no reason to think that we could ever determine the actual initial state of the world regarding this matter. Another answer is that tradition itself is reason-giving. I do not believe that many people (including Epstein, Palmer, or Feallsanach) would accept this answer, especially in light of past traditions

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

such as witch-burnings and slavery, the traditional character of which does nothing to recommend them. Yet another answer, the one Epstein no doubt has in mind, is that the consequences of following this tradition would be beneficial. But here tradition might as well drop out of the normative game, since it is the consequences of the *content* of the tradition, and not the consequences of such content *being a tradition*, that are doing the work. I will examine this consequence-based reasoning below. For now, we can conclude that tradition itself is not a good reason to conceive of the world as if it were initially unowned.

The second kind of reason in support of treating the world as if it were initially unowned is that doing otherwise would be incompatible with libertarianism. This is a reason that Feallsanach offers. After falsely attributing to Cohen and me the view that "the world in its original state is jointly owned among all human beings" (neither I nor Cohen pretend to be making claims about the original state of the world), he apparently objects to joint ownership by stating that "this is not the Lockean-libertarian position" (Feallsanach 1998, M3). If that is supposed to be an argument in support of treating the world as initially unowned, it is clearly question-begging. That the world was initially unowned is supposed to be a premise in the Lockean argument for libertarianism, not a conclusion in an argument premised on the truth of libertarianism. This kind of reasoning leaves both libertarianism and the claim that we should treat the world as if it were initially unowned without foundation.

The third kind of reason is explicitly consequentialist; it claims that treating the world as if it were initially jointly owned would lead to terrible consequences. Locke reasons this way. He writes that if the consent requirements of joint world-ownership were in place in the state of nature, then it would have been the case that "man had starved, notwithstanding the plenty God had given him" (§28). Epstein, Palmer, and Feallsanach follow Locke here, arguing that the disastrous consequences of treating the world as if it were initially jointly owned give us sufficient reason to treat the world instead as if it were initially unowned and ripe for private appropriation. This kind of reasoning, however, is misleading. It is not treating the world as if it were *initially* jointly owned that would lead to terrible consequences. What would lead to terrible consequences would be to take the initial ownership status of the world as binding on us *today*—that is, to take the belief that the world should be considered as if it were *origi-*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*nally* jointly owned as a compelling reason to treat the world *now* as if it were jointly owned.[4] But even that formulation is too indirect, since what would be bringing about the terrible consequences, if we are to take Locke's account as accurate, is not a belief in joint ownership, but rather the various *institutions* we would create and *policies* we would enforce in order to reflect the belief that we ought to treat the world as if it were jointly owned. Thus, once we begin appealing to consequences, we can see that what is really at stake is not the initial ownership of the world, but the kinds of institutions that now ought to be in place.

This indicates that the question of the initial ownership status of the world is irrelevant, a needless distraction. It misleadingly evokes the hope that major disagreements over society's institutions can be settled by appeal to an historical fact—whether the world was initially unowned for later, private acquisition. Yet there is no such historical fact. If talk about "the world in its original state" continues beyond this realization, let us be explicit about what such talk is: the elaboration of, and debate over, competing myths designed to get us to treat the world *as if* it were a certain way. We saw above that the strongest reasons in this debate concern the consequences of these myths. But discourse about the consequences of these myths is much like discourse about ether—it is about something we no longer need to posit. For the consequences at issue are not really the consequences of a particular myth (myths, after all, do not cause starvation), but the consequences of certain social and political institutions we would put in place if we decided to act on our belief in that myth. And if that is true, we can drop the talk about myths and simply discuss the institutions in question. We can cease the tiresome quarrels over the initial ownership of the world without impoverishing the real and important debates over what economic, political, and social arrangements we ought to have.

## *Unmasking the Argument*

What remains of the self-ownership argument for libertarianism? Feallsanach contends that the success of this argument requires maintaining that the world is initially unowned, but can later be privately acquired. If my foregoing argument is correct, the only way of sensibly interpreting this is to say that the success of the argument de-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pends on whether libertarian institutions such as private property rights and laissez-faire markets bring about the desired consequences. What are the desired consequences?

One candidate is that everyone's self-ownership be respected. This will not yield an argument for libertarianism instead of other arrangements, though, since Cohen's arguments show that formal self-ownership is compatible with nonlibertarian institutions, and that substantive self-ownership is not respected by libertarianism. Another candidate for the desired consequences are libertarian institutions themselves, such as private property and laissez-faire markets. But that would justify libertarian institutions simply because they are libertarian institutions—a plainly circular argument. Maybe the candidate would be something like autonomy for all, or some other version of positive freedom. However, it is likely that providing this would require redistribution of wealth from the richer to the poorer, which is prohibited under libertarianism. Other freedom-based accounts are problematic, too.[5]

Perhaps, then, the desired candidate is an end such as happiness or well-being. If that is the case, though, then the argument for libertarianism is at heart a straightforwardly consequentialist and (in this case) utilitarian argument. Once a libertarian concedes this point, as Epstein (1998, 312) appears to, then he has conceded the success of Cohen's arguments against what we can call "deontological" libertarianism. Cohen's arguments do not refute consequentialist libertarianism, and were never intended to. They "only" refute varieties of libertarianism that are grounded on self-ownership or freedom. For Epstein this is no big deal, since, he claims, "the defense of a system of private property" does not rely on such deontological arguments (ibid., 316). Is it presumptuous to suggest that he does not speak for all libertarians?

Many libertarians (Nozick, Rothbard, Flew, Narveson, to name only a few) apparently do believe that their preferred institutions follow from self-ownership or freedom. Cohen's arguments demonstrate that this belief is false. Thus my claim that Cohen's arguments present libertarians with a choice (Weinberg 1997, 337). They can follow their commitment to private property and laissez-faire markets by attempting to justify them on consequentialist grounds, or they can follow their commitment to self-ownership or freedom by defending leftist political views.[6] As I have shown, none of the objections raised by Epstein, Palmer, and Feallsanach refutes Cohen's antilibertarian

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

conclusion. Thus, none of them extricates libertarians from this difficult choice.

## NOTES

1. Palmer (1998, 229ff.) spends much time arguing that (a) is false. Epstein (1998, 314), Palmer (1998, 239ff.), and Feallsanach (1998, 321) argue against (b), even though, as Palmer (1998, 243) notes, Cohen does not believe that (b) is true (Cohen 1995, 15). Inexplicably, Feallsanach argues against (c), despite the fact that neither Cohen nor I believe (c).
2. The argument presented here is simply a variation on Cohen's analysis of libertarian responses to the Able and Infirm story (Cohen 1995, 100). Note that, contra Feallsanach, it does not rely on (c).
3. Similarly irrelevant is Epstein's attempt to expose defects in Cohen's argument by explaining what would happen if we put Able and Infirm in a world governed by Epstein's preferred rules (Epstein 1998, 313ff.).
4. Some might object here that we have no choice but to take the initial ownership status of the world as binding on us today. This might reasonably be thought true if what we were discussing was the actual historical ownership of the world in its original state (though see Christman 1994, 63–65 for why this is false). But I showed above that any such historical claim is unprovable. What we are discussing instead are "as-if" claims, or myths, which we can accept or reject at any time on the strength of the reasons offered in support of them.
5. On this point see Cohen 1995, 55–66, or Weinberg 1997, 324–30.
6. Since I leave open the success of both of these projects, I am bewildered by Epstein's assumption that I am a "commited socialist" (1998, 317).

## REFERENCES

Christman, John. 1994. *The Myth of Property*. New York: Oxford University Press.

Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press.

Epstein, Richard A. 1998. "The Right Set of Simple Rules: A Short Reply to Frederick Schauer and Comment on G. A. Cohen." *Critical Review* 12(3): 305–18.

Feallsanach, Am. 1998. "Locke and Libertarian Property Rights." *Critical Review* 12(3): 319–23.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

Palmer, Tom G. 1998. "G. A. Cohen on Self-Ownership, Property, and Equality." *Critical Review* 12(3): 225–51.

Weinberg, Justin. 1997. "Freedom, Self-Ownership, and Libertarian Philosophical Diaspora." *Critical Review* 11(3): 323–44.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Tom G. Palmer*

# WHAT'S *NOT* WRONG WITH LIBERTARIANISM: REPLY TO FRIEDMAN

ABSTRACT: *In his critique of modern libertarian thinking, Jeffrey Friedman (1997) argues that libertarian moral theory makes social science irrelevant. However, if its moral claims are hypothetical rather than categorical imperatives, then economics, history, sociology, and other disciplines play a central role in libertarian thought. Limitations on human knowledge necessitate abstractly formulated rules, among which are claims of rights. Further, Friedman's remarks on freedom rest on an erroneous understanding of the role of definitions in philosophy, and his characterization of the "right to do wrong" as a "logical contradiction" reveals a misunderstanding of logic.*

There are many problems in Jeffrey Friedman's "What's Wrong with Libertarianism" (*Critical Review* 11, no. 1), but one is so important to his entire critique that I wish to get right to it.

Friedman insists that there is an inconsistency between believing that individuals have rights, on the one hand, and evaluating policies on the grounds of their good or bad consequences generally (setting aside the trivial consequence that the policies may be compatible or incompatible with the asserted rights themselves). Friedman calls the attempt to get around this inconsistency "libertarian straddling," which "tries to marry instrumentalist and intrinsic defenses of liber-

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

Tom G. Palmer, Senior Fellow in Moral and Political Thought, Cato Institute, 1000 Massachusetts Avenue, N. W., Washington, D. C. 20001, telephone (202) 789-5299, telefax (202) 842-3490, e-mail tpalmer@cato.org, thanks David Boaz for his comments.



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tarianism while giving primacy to the latter"; he expresses amazement that this straddling allows "the armchair philosopher," "the economist," "the sociologist," "and the political scientist" all to reach "the same conclusion—libertarianism" (Friedman 1997, 435). "Divine intervention might seem to be the only thing that could make sense of this libertarian straddle," he writes, suggesting that perhaps the reconciliation of rights and consequences is delusory.

Friedman writes:

> The effect of libertarian straddling on libertarian scholarship is suggested by a passage in the scholarly appendix to Boaz's collection of libertarian essays, *The Libertarian Reader.* There, Tom G. Palmer (also of the Cato Institute) writes that in libertarian scholarship "the moral imperatives of peace and voluntary cooperation are *brought together* with a rich understanding of the spontaneous order made possible by such voluntary cooperation, and of the ways in which coercive intervention can disorder the world and set in motion complex trains of unintended consequences" (Boaz 1997b, 416, emphasis added). Palmer's ambiguous "brought together" suggests (without coming right out and saying) that even if there were no rich understanding of spontaneous order, libertarianism would be sustained by "moral imperatives." But in that case, why develop the rich understanding of spontaneous order in the first place, and why emphasize its importance now that it has been developed? Spontaneous order is, on Palmer's own terms, *irrelevant,* since even if a rich understanding of it yielded the conclusion that markets are *less* orderly or less spontaneous than states, or that the quality of the order they produce is *inferior* to that produced by states, we would still be compelled to be libertarians by moral imperatives. The premise of the philosophical approach is that nothing can possibly trump freedom-cum-private property. (Friedman 1997, 436, emphasis in original)

The best that I can make of this is that Friedman assumes that by "moral imperative" I meant "categorical imperative," for that is the only reading that would make sense of his claim. If an imperative were truly categorical, then it would indeed trump all other considerations. For example, no concern with the consequences of an act could override a categorical imperative to perform the act. Friedman's description could easily lead one to think that I was being very, very sneaky, in "suggest[ing] (without coming right out and saying)" that consequences are irrelevant, but the truth is far less interesting. I did not write "categorical imperative," not because I hoped to slip

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

something past the unsophisticated reader, but merely because I did not *mean* categorical imperative. Friedman's language implies that I am secretly in agreement with him but won't "come right out and say so" and suggests the existence among libertarian philosophers of the kind of conspiracy attributed to the Pythagoreans, who are reputed to have killed cult members who disclosed the existence of incommensurable quantities, such as the sides of a right triangle, thereby revealing the error of asserting that the universe could be expressed in terms of whole numbers, which was the central tenet of the Pythagorean cult. That would, admittedly, be more interesting than merely discovering that I and other libertarians disagree with Jeffrey Friedman.

Allow me to set the record straight. Not all imperatives are categorical. Some imperatives, for example, are hypothetical. Thus, "If you wish to be strong, you must exercise and eat well" is a hypothetical imperative. Implicit in Friedman's entire essay is the view that all moral claims are *necessarily* categorical claims, and thus, it would seem, that the only (or at least the first) moral philosopher was Immanuel Kant. That may be right, but it is hardly self-evident or a widely accepted claim. Kant (1964, 82) himself distinguished between kinds of imperatives:

> All *imperatives* command either *hypothetically* or *categorically*. Hypothetical imperatives declare a possible action to be practically necessary as a means to the attainment of something else that one wills (or that one may will). A categorical imperative would be one which represented an action as objectively necessary in itself apart from its relation to a further end.

Kant limited claims of morality to "the relation of actions to the autonomy of the will—that is, to a possible making of universal law by means of its maxims"(ibid., 107). Only if morality is limited in this or some similar way is it true that consequences are irrelevant to moral or legal evaluation. If spontaneous order is irrelevant, it is not on "Palmer's own terms," but on *Friedman's* terms.

The reason that I did not "come right out and say" that consequences are irrelevant to evaluating claims of morality or justice is that I don't believe that they are irrelevant.[1] Nor do I think that "the effects of libertarianism could not conceivably outweigh the putative intrinsic value of private property" (Friedman 1997, 436). And I am

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in pretty good company here: Aristotle, Aquinas, Grotius, Locke, Pufendorf, Hume, Smith, and a few hundred others who fancied themselves moral philosophers would agree. Indeed, some philosophers explicitly ground morality on hypothetical imperatives: given the facts of reality, if you want to achieve X, then you must do Y (e.g., Foot 1972 and Barnett 1998). The empirical investigation of reality is at the foundation of the rights claims of the modern natural-rights tradition (as also of the classical tradition). That is why it should *not* seem an amazing coincidence that a sociologist, a philosopher, a political scientist, and an economist might come to convergent, compatible, or even identical conclusions.[2] They are all trying to study the same topic: humanity. Is it merely an amazing coincidence that biologists find that the investigations of mathematicians regarding the relationship between the cubic volume and the surface of a sphere explain why unicellular algae are not the size of basketballs (see Thompson 1966)? Or that the chemist and the physicist collaborate and reinforce each other's research into the nature of chemical reactions? These are not surprising because there is one reality that is being studied in different ways by different disciplines. The principle of Ockham's Razor suggests that the singular nature (or unicity) of the topic of study is a more likely explanation of convergent conclusions than a conspiracy among social scientists.

It is only because Friedman assumes (without ever stating explicitly) that moral claims—most strongly claims of right—are necessarily categorical claims that he can set up his opposition between rights claims and consequentialism.[3] But not everyone understands claims of right as categorical. If claims of right are understood in other ways, the alleged conflict between rights claims and consideration of consequences disappears.

The modern natural-rights theorists based their claims on behalf of rights precisely on the relationship between rules and good consequences, and advocated regimes of imprescriptible rights rather than regimes of arbitrary power for the very epistemic reasons Friedman invokes in his critique of what he mistakes to be David Boaz's understanding of individual rights (437–38).[4] As Friedman (1997, 437) states, Boaz makes claims "about the empirical consequences of libertarianism. As such, its validity cannot be known in advance." This is true and important. It is precisely because we cannot know in advance the consequences of each and every action, and thus judge the goodness or badness (hence permissibility or impermissibility) of each

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and every act, that we need rules to guide us. It tells moral agents nothing to say "always do what is best" or "always do what yields the best consequences," for such knowledge is normally not available to us. Rights and the rules of justice provide the standard of action, but not the goal. The goal or justification of a system of rights is its good consequences (life, prosperity, peace, cooperation, knowledge, social harmony, etc.), but we find that we cannot aim at those goals directly. Much as economic planning cannot work in the absence of a system of markets and prices, peaceful cooperation cannot come about except by means of a system of rules and claims of justice that we refer to as rights. Attempts to achieve good consequences directly may be self-defeating (see Parfit 1986). Requiring agents to act so as always to attempt to generate the best consequences may very well generate consequences inferior to the consequences generated by requiring agents to follow a set of rules.

In the modern natural-rights tradition, the invocation of the good or bad consequences of rules and institutions plays a role in justifications of the claim that individuals have rights; the question is, at what level do we invoke this justification? Do we ask about the consequences of each and every act, taken singly, or do we ask about the consequences of adhering to *systems of rules*? Surely, only the latter course is open to us, given our epistemic limitations. As F. A. Hayek noted,

> rules are a device for coping with our constitutional ignorance. There would be no need for rules among omniscient people who were in agreement on the relative importance of all the different ends. Any examination of the moral or legal order which leaves this fact out of account misses the central problem. (Hayek 1976, 8)

Friedman is quite impressed by the critique of socialism offered by Mises and Hayek, but he seems not to understand that the very same considerations are at the base of the modern natural-rights tradition.

As David Hume (1978, III.II.ii, 496–97) noted,

> if men pursu'd the publick interest naturally, and with a hearty affection, they wou'd never have dream'd of restraining each other by these rules; and if they pursu'd their own interest, without any precaution, they wou'd run head-long into every kind of injustice and violence. These rules, therefore, are artificial, and seek their end in an oblique and indirect manner; nor is the interest, which gives rise to them, of a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> kind that cou'd be pursu'd by the natural and inartificial passions of men.

Hume—along with others in the modern natural-rights tradition—realized that certain good consequences can only be attained indirectly, by establishing or fostering a system of rights that are action-guiding, i.e., that let agents know what they may do and what they may not do. Hume (1978, III.II.i, 484) was merely stating what was widely understood among writers on natural right:[5]

> To avoid giving offence, I must here observe, that when I deny justice to be a natural virtue, I make use of the word, natural, only as oppos'd to artificial. In another sense of the word; as no principle of the human mind is more natural than a sense of virtue; so no virtue is more natural than justice. Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as any thing that proceeds immediately from original principles, without the intervention of thought or reflexion. Tho' the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them Laws of Nature; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species.

So evaluation of consequences *does* matter, but it matters at the level of justifying a general system of rights. Precisely because of the limitations of human knowledge that Friedman acknowledges were the downfall of socialism, we cannot normally invoke consequentialism on a case-by-case basis. That is, after all, as Hume (and more recently, Hayek) so strongly emphasized, the justification for rules. It is for this reason that Friedman's stipulated test of the validity of libertarian conclusions sets an impossible standard and misunderstands the nature of the libertarian argument: "Libertarian conclusions require not only extensive evidence of government failure, but an empirically substantiated reason to think that such failure is *always* more likely than the failure of civil society" (412, emphasis in original).

It seems at first that Friedman is demanding a proof that voluntarism (understood as libertarians understand it) is *always* better than coercion. Such a proof would be impossible. But another look indicates that in this sentence all that he demands is to be shown that "such failure is always *more likely*" (emphasis added). If I understand this rather imprecise formulation, I think that such a standard could

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

be met, if one were to compare real civil societies with real states, rather than real (and therefore imperfect) civil societies with ideal (and therefore perfect) states. On the next page Friedman, however, explicitly sets the standard higher: "the utilitarian libertarian" must show that "*all* government intervention with [property rights] is bound to fail" (emphasis added). Now, what would a proof of that form be like? Well, it would certainly be very different from a proof that "such failure is always more likely." Friedman goes from demanding a proof that freedom is always *more likely* to work to demanding a proof that freedom *is always better.* As Aristotle noted in the *Nicomachean Ethics* regarding standards of proof in political thinking, "it is the mark of an educated mind to expect that amount of exactness in each kind which the nature of the particular object admits. It is equally unreasonable to accept merely probable conclusions from a mathematician and to demand strict demonstration from an orator" (1094b25–30). It is unreasonable to demand that libertarians prove that respect for rights is superior in every respect and in all possible circumstances to coercion, but not to make the same demand of advocates of statism. No political theory could meet Friedman's test.

To sum up: there need not be any contradiction between assertions of right and justice and scientifically validated claims about the consequences of different kinds of political and legal regimes. As Boaz (1997b, xx) asked in the introduction to *The Libertarian Reader*:

> Do libertarians believe in free markets because of a belief in individual rights or an empirical observation that markets produce prosperity and social harmony? The question ultimately makes no sense. As Hume said, the circumstances confronting humans are our self-interestedness, our necessarily limited generosity toward others, and the scarcity of resources available to fulfill our needs. Because of these circumstances, it is necessary for us to cooperate with others and to have rules of justice—especially regarding property and exchange—to define how we can do so. If individuals using their own knowledge for their own purposes didn't generate a spontaneous order of peace and prosperity, it would make little sense to advocate either natural rights or free markets.[6]

It would take an essay as long as Friedman's to answer all of his charges. (It would even take an essay just to note his demeaning and personal attacks on libertarian writers, e.g., the frequent questioning of the motives of libertarian writers, the slighting reference to "the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

untroubled sleep and closed minds of libertarians," the characterization of social scientific research by libertarians as "propaganda," the suggestion of a conspiracy among libertarian social scientists, and so on.) I will merely consider a few logical and factual errors.

## *Can We Define Freedom Any Way We Want?*

In defense of his preferred understanding of "freedom," Friedman (1997, 432) writes that "one stipulative definition is as good as another." Logicians would find this a surprising claim. As Irving Copi (1982, 149–50) noted in his treatment of definitions,

> It is not the case that any stipulative definition is as "good" as any other, but the grounds for their comparison must clearly be other than truth or falsehood, for these terms simply do not apply. Stipulative definitions are arbitrary only in the sense specified. ["A symbol defined by a stipulative definition did not have that meaning prior to being given it by the definition."] Whether they are clear or unclear, advantageous or disadvantageous, or the like, are factual questions.

A stipulated definition that fails to distinguish a thing in terms of exclusive categories, for example, would be disadvantageous and inferior to an alternative definition that does use categories properly. Thus, the stipulated definition of a human being as a "featherless biped" fails as a definition of "human being." It is not false, but it is *not* "as good" as any number of other definitions. Simply defining freedom as ability, which is the route taken by some of the figures whom Friedman cites approvingly, is an exercise in bad definition, because we already *have* a good word to denote ability. It's "ability."

Definitions are tools of the mind. They are more or less useful depending on how well they help us to understand, organize, and affect the world.[7] Friedman's rejection of libertarian conceptions of freedom and his rather confusing defense of a (never clearly articulated) alternative definition suffer from the central flaw that they don't help us to understand the world of human action or to distinguish between different kinds of actions. For example, consider his claim that libertarian-compatible property systems are just as coercive and restrictive of freedom as systems that are *not* compatible with libertarianism. If that were true, then using force to prevent another person from having sexual congress with yourself (conventionally termed

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"rape" by those beset with "bourgeois complacency," as Friedman [1997, 419] characterizes Charles Murray) would be just as much a use of force as is using force to have sexual congress with another person who does not desire it. Therefore there must be no difference between the two, at least with respect to whether one approach is more or less coercive or free than the other. "Raping" is no more coercive than "resisting rape." Freedom is slavery, after all!

According to Friedman (1997, 428),

> Inasmuch as there is just as much of the world to be parcelled out under each system's set of property rules, and the rights governing all of this property are just as coercively enforced in all systems, there is no difference in the 'amount' of coercion—or conversely, the amount of (negative) freedom—under different legal systems, including libertarianism. . . . So, strictly in terms of negative liberty—freedom from physical coercion—libertarianism has no edge over any other system.

For example, Canada in 1944 and Germany in 1944 were equally free and had equal "amounts" of coercion. Friedman cites the venerable authority of G. A. Cohen in support of this remarkable and counterintuitive claim.[8] But is it in fact true that the system of several property that is found in "capitalist" societies and is largely respected on the basis of custom, morality, and reciprocal respect is indistinguishable in terms of coercion and freedom from the communism that G. A. Cohen spent his life defending, which rests on the constant exercise of terror against a subject population?[9] Friedman and Cohen argue that it is. It is on the basis of this claim that Friedman concludes that "negative" freedom cannot be the freedom in which we should be interested (the "true" freedom?), and that we should instead plump for "positive" freedom, apparently understood as doing whatever I want to do.

Three hundred years ago Locke labeled such a condition "licence" and distinguished it from "liberty." As Locke argued in his second *Treatise of Government* (sec. 6), "*The State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions."[10] Writers in the Whig/classical liberal tradition did not generally consider the freedom or liberty that they sought as mere lack of constraint, but as freedom from subjection to the arbitrary and lawless will of another. In Algernon Sidney's words,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"liberty solely consists in an independency upon the will of another, and by the name of slave we understand a man, who can neither dispose of his person nor goods, but enjoys all at the will of his master" (Sidney 1990, 17). That is why libertarians have always placed so much stress on the rule of law: again, Locke (sec. 57) notes,

> *The end of Law* is not to abolish or restrain, *but to preserve and enlarge Freedom*: For in all the states of created beings capable of Laws, *where there is no Law, there is no Freedom.* For *Liberty* is to be free from restraint and violence from others which cannot be, where there is no Law: But Freedom is not, as we are told, *A Liberty for every Man to do what he lists*: (For who could be free, when every other Man's Humour might domineer over him?) But a *Liberty* to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own.

(Cf. Barnett 1998, Introduction.)

## *Libertarianism: Both the Status Quo and Outside of the Mainstream?*

Friedman claims on one page to have shown "libertarianism's extreme cultural marginality" (440) and *also* claims in footnote 7 (463) that libertarian philosophers "portray status-quo property relationships, reconceived as 'Lockean,' as natural ones." On p. 433 Friedman suggests that the libertarian "worldview rests on unexamined presuppositions absorbed unconsciously from the culture of capitalism." So libertarians are guilty of "willful isolation from the mainstream" (441) at the same time that they are carriers of "unexamined presuppositions absorbed unconsciously" from the dominant culture and hostage to "status-quo property relationships," i.e., shills for existing (and perhaps sinister) interests. If "the mainstream" is exemplified by the Harvard faculty lounge, Friedman may be right that libertarianism is isolated from the mainstream, but if he has a wider notion of the mainstream, it is hard to see how libertarianism is both marginal *and* the philosophy of the status quo. That would be quite a trick. (It may be that many property relationships in largely liberal societies are just—in the sense that no better titles can be shown than the existing ones—but that is at least partly the result of the efforts of libertarians over the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

centuries to defend and extend freedom and justice. The idea that libertarian ideas are a defense of the "status quo" is an insult to the uncounted martyrs who have sacrificed so much to achieve justice in those societies that approximate free societies, to the libertarians who failed because they were murdered by communist, monarchist, fascist, national socialist, and other collectivist states, and to the billions of people who today live in regimes that are decidedly *un*just.)

## *Logic and the "Right to Do Wrong"*

Friedman evinces amazement that libertarians might believe that one could have "a right to do wrong." His treatment, in a footnote (465 n11), is written as if no moral philosopher had ever thought about the problem. He admits that "many consequentialist reasons for such a right are conceivable," such as the negative effects of civil wars, but argues that it is a "prima facie logical contradiction" to "contend that it is intrinsically valuable to be able to do what is bad—intrinsically valuable, that is, to be able to do what is intrinsically valueless." Friedman exhibits an unusual and unorthodox understanding of the nature of logical contradiction.

A logical contradiction has the form of "p and (not p)" (or "p • ~p") (Copi 1982, 314). Thus, for Friedman to make the claim that the conjunction of "I have a right to do X" and "it is wrong to do X" is a logical contradiction, he must argue that "it is wrong to do X" is the same statement as "it is not the case that I have a right to do X," but he claims that as his conclusion, so to make it a premise of the proof is hardly a valid demonstration! There would be a contradiction only if we were to assume as a premise what Friedman presents as a conclusion. It would indeed be a contradiction to affirm simultaneously

"It is good to do X"
and
"It is not good to do X,"

but that is *not* what advocates of a "right to do wrong" affirm. What they affirm simultaneously is

"It is good *to be allowed* to do X"
and
"It is not good to do X."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The all-important phrase "to be allowed," present in the first statement and absent in the second, is what distinguishes "the right to do wrong" from a logical contradiction. Under no understanding of the term "logical contradiction" could "the right to do wrong" qualify as a logical contradiction.

There is no logical contradiction in asserting that the free exercise of moral agency is intrinsically valuable. It may not be true, but it is not a logical contradiction. The achievement of a good life on the basis of one's own choices, rather than on the basis of having been beaten into making the outward motions consistent with doing the "right thing," may be the only way actually to achieve a good life, for self-direction may be one of the necessary ingredients of a good life. As Aristotle noted in the *Nicomachean Ethics* (1199b 20–21), "it is better to be happy as a result of one's own exertions than by the gift of fortune," and it could surely be argued that it is better to be happy as a result of one's own choices than as a result of the violent interventions of others—indeed, that such "coerced happiness" would not be happiness at all, for "happiness is an activity in accordance with virtue" (ibid., 1098b30). Happiness is not a passive state, but an active one, for "just as at the Olympic games the wreaths of victory are not bestowed upon the handsomest and strongest persons present, but on men who enter for the competitions—since it is among those that the winners will be found,—so it is those who act rightly who carry off the prizes and good things of life" (ibid. 1199a4–10).[11]

Aristotle may be wrong about this, but if he is, it is not because of a "prima facie logical contradiction."[12] Nor was it a logical contradiction for Tertullian to argue against forced conversion to what he considered the highest truth—the Christian faith—when he argued:

> It is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions: one man's religion neither harms nor helps another man. It is assuredly no part of religion to compel religion—to which free will and not force should lead us. (Quoted in Smith 1991, 97)

For Tertullian, true Christian faith simply could not be acquired through compulsion, but was a gift from God that could only be accepted freely.

There is a long tradition of inquiry into justice and freedom that focuses attention on the faculty of human choice.[13] In his funeral oration,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Pericles praised Athens for its freedom and connected this with the condition that each citizen was "the rightful lord and owner of his own person":

> Taking everything together then, I declare that our city is an education to Greece, and I declare that in my opinion, each single one of our citizens, in all the manifold aspects of life, is able to show himself the rightful lord and owner of his own person, and do this, moreover, with exceptional grace and exceptional versatility. (Thucydides 1986, 147–48)[14]

This concern with the ability of choice, or "freedom of the will," as it is sometimes termed, is at the foundation of the entire libertarian tradition. Human beings are sources of changes in the world; they have the faculty of choice and can be held accountable for their acts. As Marsilius of Padua (1956, II.xii, 193) noted in 1324,

> this term "ownership" [dominium] is used to refer to the human will or freedom in itself with its organic executive or motive power unimpeded. For it is through these that we are capable of certain acts and their opposites. It is for this reason too that man alone among the animals is said to have ownership or control of his acts; this control belongs to him by nature, it is not acquired through an act of will or choice.

Dominium, or self-mastery, was the central feature of the debate over the rights of the American Indians (see Vitoria 1991a and 1991b and las Casas 1992). The advocates of enslaving the Indians argued that they were the "natural slaves" of whom Aristotle had written in his *Politics*, incapable of self-mastery and thus requiring the guiding hand of their Spanish overlords. This was hotly disputed by the protolibertarians of the school of Salamanca. In Vitoria's words,

> Every Indian is a man and thus is capable of attaining salvation or damnation. Every man is a person and is the master of his body and possessions. Inasmuch as he is a person, every Indian has free will and, consequently, is the master of his actions. (1991b, 17)

Vitoria (1991a, 250–51) concluded in his famous lectures of 1539 that the Indians had the same rights as the Christian Europeans:

> The conclusion of all that has been said is that the barbarians possessed as true dominion, both public and private, as any Christians. That is to say, they could not be robbed of their property, either as private citizens

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> or as princes, on the grounds that they were not true masters (*ueri domini*). It would be harsh to deny to them, who have never done us any wrong, the rights we concede to Saracens and Jews, who have been continual enemies of the Christian religion. Yet we do not deny the right of ownership (*dominium rerum*) of the latter, unless it be in the case of Christian lands which they have conquered.

The theme of personal dominium was central to the arguments of the first libertarians, the Levellers. (See, for example, Walwyn 1989 and Overton 1943, esp. 381–82 and 1997.) Locke, too, focused attention on choice and responsibility in the very conception of the human person:

> *Person*, as I take it, is the name for this *self*. Where-ever a Man finds, what he calls *himself*, there I think another may say is the same *Person*. It is a Forensick Term appropriating Actions and their Merit; and so belongs only to intelligent Agents capable of a Law, and Happiness and Misery. This personality extends it *self* beyond present Existence to what is past, only by consciousness, whereby it becomes concerned and accountable, owns and imputes to it *self* past Actions, just upon the same ground, and for the same reason, that it does the present. (1979, II. xxvii, 26)

We own our actions. We can be held accountable by our fellows (see Strawson 1993). As human beings we are rational creatures capable of choice and therefore capable of being held responsible and accountable for our actions. The exercise and development of this faculty is intrinsically valuable. To be able to *choose* the good means that one is also able to choose the bad. Friedman may be baffled by this, but if so, he is simply baffled by reality. Indeed, to attempt to deny the possibility of choice, i.e., to choose to deny it, is to engage in a contradiction, viz. a performative contradiction: examples of performative contradiction are the written statement "Me always write grammatical," the spoken utterance "I am now silent," and the choice to deny that choice is possible. It is not libertarians who contradict themselves by asserting a "right to do wrong," but those who deny the possibility of human choice.[15]

## *With Lack of Charity toward Some*

Friedman is remarkably uncharitable in his interpretations of those whom he criticizes. Friedman contends that Charles Murray is guilty of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"bourgeois complacency" (Friedman 1997, 419); he calls his argument "facile" (ibid., 421); and he dismisses Murray's discusson of the role of achievement as "ruminations" (ibid., 421). In addition, Murray the eudaimonist is labeled "a utilitarian" (ibid., 418) because he is concerned about consequences, which obscures the difference between a consequentialist and a utilitarian (I would say that they are related as genus is to species, but that might make me a "Scholastic," evidently a term of abuse to Friedman [ibid., 431]), and he ignores Murray's well-articulated views on the significance of human achievement, which have, after all, been stated in his much longer book *In Pursuit: Of Happiness and Good Government*. (Human achievement is also the subject of Murray's current research and writing.)

In Friedman's dismissal of another distinguished libertarian scholar he writes, "it was Milton Friedman who, after all, most famously equated capitalism with freedom" (Friedman 1997, 436). Milton Friedman (1962, 8) did not *equate* capitalism with freedom; he argued something very different, viz. that "On the one hand, freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensable means toward the achievement of political freedom." An important part of Milton Friedman's case was the concession that "history suggests only that capitalism is a necessary condition for political freedom. Clearly it is not a sufficient condition" (ibid., 10). To say that X is part of Y, or that X is a necessary but not sufficient condition of Y, is not to equate X and Y.

These are by no means the only faults in Friedman's rebuttal of libertarianism. I leave the others to the reader to find. I will merely conclude by thanking him for allowing me the opportunity to rethink and rediscover just why I find libertarianism as a political theory superior to its competitors, and to offer my criticisms of his arguments in the journal he edits.

NOTES

1. Despite my deep admiration for Immanuel Kant's achievements, I do not accept his bifurcation between the phenomenal world of appearance and the noumenal world of intelligibility, which is central to his grounding of the categorical imperative, and thus I do not accept his claim that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

> *the intelligible world contains the ground of the sensible world and therefore also of its laws*; and so in respect of my will, for which (as belonging entirely to the intelligible world) it gives laws immediately, it must also be conceived as containing such a ground. Hence, in spite of regarding myself from one point of view as a being that belongs to the sensible world, I shall have to recognize that, *qua* intelligence, I am subject to the law of the intelligible world—that is, to the reason which contains this law in the Idea of freedom, and so to the autonomy of the will—and therefore I must look on the laws of the intelligible world as imperatives for me and on the actions which conform to this principle as duties

(Kant 1964, 121, emphasis in original)

2. One could easily add others. See, for example, the work of the zoologist and libertarian Matt Ridley, *The Origins of Virtue: Human Instincts and the Evolution of Cooperation* (1996).
3. It should be noted that "consequentialism" by itself is not a political theory, nor even a theory of the good. What counts as a good or a bad consequence cannot by itself be determined by invoking consequentialism; there must be some deeper reflection (or "rumination," to use the term that Friedman uses to dismiss Charles Murray's considered views on the matter) about what consequences we should seek to achieve or avoid. Friedman's position, although presented as clearly superior to "philosophical libertarianism," is naive and unreflective.
4. Friedman subjects Boaz's defense of individualism to a series of misinterpretations, missing Boaz's main point, viz., that when we speak of groups deliberating or acting, the group that deliberates or acts is made up of the numerically individuated humans *and* the various relations among them; the group does not constitute another person that is essentially like the numerically individuated persons who make up the group. A forest is made up of individual trees and all of their complex relations; without the particular trees, we would not have a forest, and the forest is not another tree. So, too, for group behavior involving humans. The group formed by Mary, Bill, and Deirdre is not another person like Mary, Bill, or Deirdre. A number of forms of collectivism explicitly deny this, and not merely the extreme forms that might come to mind, but the tamer forms that abound in American universities. For example, the coercive communitarian political theorist Michael Sandel criticizes liberal individualism for relying on an "antecedent individuation of the subject" and proposes instead that "in so far as our constitutive self-understandings comprehend a wider subject than the individual alone, whether a family or tribe or city or class or nation or people, to this extent they define a community in a constitutive sense" (Sandel 1982, 172). Thus, "the bounds of the self are no longer fixed, individuated in advance and given prior to experience" (ibid., 183). A community, nation, class, or state could then be a "self." Boaz simply tries to bring some common sense to the discussion, for the "self" that is constituted by Bill and Mary would not be the same kind of self that Bill is or that Mary is. Using the same terms (self and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

person, for example) to describe these "wider subjects" is a category error with significant consequences for political theory.

5. As Stephen Buckle (1991, 90) notes, "rather than, as is sometimes held, being a decisive break from the tradition of natural law, Hume's account depends crucially on distinctions already established by Pufendorf."
6. John Locke also considered the issue of the relationship of utility (generally considered) and right in his writings on natural law: "utility is not the basis of the law or the ground of obligation, but the consequence of obedience to it. . . . And thus the rightness of an action does not depend on its utility; on the contrary, its utility is a result of its rightness" (Locke 1997, 133). Both Locke (at least in this text) and Pufendorf argued that the natural law had the sanction of God, through the prospect of reward or punishment in the next life. Thus, Pufendorf (1991, 36) noted that "though these precepts [of the natural law] have a clear utility, they get the force of law only upon the presupposition that God exists and rules all things by His providence, and that He has enjoined the human race to observe as laws those dictates of reason which He has Himself promulgated by the force of the innate light." Friedman might fasten upon the theological element of Locke's and Pufendorf's formulations and argue that, if we don't agree with their theology, we must reject all of what they said about natural law. But the theological claim is by no means a necessary part of their argument, as Hume realized, nor is it relevant to the question at hand, viz., whether claims of right can be grounded on predictions of consequences and the evaluation thereof. Rights claims, for Locke, Pufendorf, Hume, and indeed for all investigators of the natural law, are necessarily justified by the consequences that follow from their general observance. Justice is necessarily contextual: under the normal circumstances of justice, the rules of justice and property yield overall good consequences, but when those circumstances are radically altered, say, in a natural disaster, then those rules of justice and property either do not apply or are modified appropriately. (See the discussion of "the limits of social and political life" in Rasmussen and Den Uyl 1991, 144–151.)
7. See the neat discussion of this issue in Kelley 1998, especially 65–77.
8. Cohen is a noted critic of libertarianism. I address directly his ingenious and intricate but erroneous and confused arguments about the relationship between property in one's person and property in external objects in Palmer 1998.
9. Cohen (1995, 250) shared (in an essay written "substantially" in 1989 and published in 1995) his thoughts about one of the most murderous, cruel, and vicious regimes in the history of humanity, the USSR. He notes that he had developed over some years "a pretty adverse assessment of the Soviet Union's claim to be a socialist society. Some people have therefore found it surprising that I should be saddened by what I perceive to be the impending final abandonment of the Bolshevik experiment. . . . It is true that I was heavily critical of the Soviet Union, but the angry little boy who pummels his fa-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ther's chest will not be glad if the old man collapses." In the footnote to the last sentence, he writes,

> Those of us on the left who were stern critics of the Soviet Union long before it collapsed needed it to be there to receive our blows. The Soviet Union needed to be there as a defective model so that, with one eye on it, we could construct a better one. It created a non-capitalist mental space in which to think about socialism.

How many tens of millions of innocent people had to die, and how many hundreds of millions had to live lives of daily oppression, so that G. A. Cohen and his comrades could have "a non-capitalist mental space in which to think about socialism"?

10. The insight is of ancient provenance. Compare with Cicero's observation in *De Officiis*:

> All men should have this one object, that the benefit of each individual and the benefit of all together should be the same. If anyone arrogates it to himself, all human intercourse will be dissolved. Furthermore, if nature prescribes that one man should want to consider the interests of another, whoever he may be, for the very reason that he is a man, it is necessary, according to the same nature, that what is beneficial to all is something common. If that is so, then we are all constrained by one and the same law of nature; and if that also is true, then we are certainly forbidden by the law of nature from acting violently against another person. The first claim is indeed true; therefore the last is true. (Cicero 1991, 109–10).

11. Friedman seems to have a very primitive understanding of human action. Two motions of a human body may be described identically in purely physical or corporeal terms, but be very different *actions*, nonetheless. Holding a door for a person in a wheelchair may be either an act of politeness, in the case of a freely chosen act, or, if done only under threat of coercion from the "politeness police," an act of simple submission motivated by fear. A purely physicalist understanding of action, which ignores the intentional dimension of human action, misses these distinctions. Friedman's mistaken claim that it is a logical contradiction to affirm a "right to do wrong" indicates that he does not grasp the important difference between freely chosen and coerced acts. Although two such acts may be comprehended under the same physicalist description, they are not the same acts. (See Davidson 1982, especially the essays on "Actions, Reasons, and Causes," "Agency," and "Intending.") P. F. Strawson (1993) neatly explained the related difference between what he called the "participant" attitude and the "objective" attitude and the inability to sustain the "objective" attitude. The "objective" attitude, as Strawson understands it, is incompatible with the very enterprise of moral investigation or action.

12. The importance of self-directedness is neatly considered in Rasmussen and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Den Uyl 1991, especially 73–75 and 93–96. It is also the foundation of the liberalism of Wilhelm von Humboldt (1993), who began his influential defense of liberty (which included a withering attack on what we now identify as the welfare state) as follows:

> The true end of Man, or that which is prescribed by the eternal and immutable dictates of reason, and not suggested by vague and transient desires, is the highest and most harmonious development of his powers to a complete and consistent whole. Freedom is the first and indispensable condition which the possibility of such a development presupposes; but there is besides another essential—intimately connected with freedom, it is true—a variety of situations. (Ibid., 10)

As Humboldt argued, a system of several property is a necessary condition for both freedom and a variety of situations.

13. A great many influential writings on individual rights have focused on what the medieval writers termed "dominium," or self-mastery; to have dominium means that one can be held responsible for one's choices, and hence that one has a faculty of moral agency that should command respect. Especially good historical treatments of this tradition can be found in the work of Brian Tierney; see, for example, Tierney 1983, 1988, 1989, 1991, and 1998. For the relationship between the concepts of "objective right" (e.g., "the right thing to do") and "subjective right" (e.g., "my right to do it") in later scholastic thinking, see also Brett 1997.
14. Compare also the arguments of Benjamin Constant (1988), who considered the exceptional personal freedom (what Constant terms "modern freedom") of the Athenians an anomaly in the ancient world and attributed this freedom to commerce and several property.
15. Friedman (1997, 421) asserts, *ex cathedra*, that Charles Murray's "libertarianism is just as vulnerable as Victorianism was to the discovery that people are not, in fact, solely or even largely responsible for their good or ill fortune." To what momentous "discovery" is Friedman alluding? More to the point, is he asserting that choice is irrelevant to happiness, or that people are not "even largely responsible" for their own well-being or happiness? Surely no reasonable person would deny that one bears no responsibility for one's birth, nor that good things can happen to bad people and bad things to good; this was hardly a surprise to "the Victorians," but has been known for some time. In "the words of the Preacher, the son of David, king in Jerusalem,"

> Again I saw that under the sun the race is not to the swift, nor the battle to the strong, nor bread to the wise, nor riches to the intelligent, nor favor to the men of skill; but time and chance happeneth to them all. For man does not know his time. Like fish which are taken in an evil net, and like birds which are caught in a snare, so the sons of men are snared at an evil time, when it suddenly falls upon them. (*Ecclesiastes* 9, 11)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Given that everyone (including Charles Murray) acknowledges this, what are we to make of it? Should we deny the very possibility of choice, or use violence to ensure that people do not bear the good or bad consequences of their own actions, or subsidize any foolish choice that one might make? Or should we recognize the cause and effect relationships of the world of facts and "internalize externalities" by means of institutions such as property? For an excellent contrast between a libertarian understanding of these issues and a socialist (or social-democratic) understanding, see Schmidtz and Goodin 1998. It is hard to imagine a reasonable reader reading both sections of that little book and finding Goodin's arguments more convincing than Schmidtz's. But then, some people believe in astrology, witchcraft, and the goodness of the "Bolshevik experiment," and I find that hard to imagine, too.

## REFERENCES


Barnett, Randy. 1998. *The Structure of Liberty: Justice and the Rule of Law.* Oxford: Clarendon Press.

Boaz, David. 1997a. *Libertarianism: A Primer.* New York: Free Press.

Boaz, David. 1997b. *The Libertarian Reader: Classic and Contemporary Writings from Lao-tzu to Milton Friedman.* New York: Free Press.

Brett, Annabel S. 1997. *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought.* Cambridge: Cambridge University Press.

Buckle, Stephen. 1991. *Natural Law and the Theory of Property: Grotius to Hume.* Oxford: Clarendon Press

de las Casas, Bartolome. 1992. *In Defense of the Indians,* trans. Stafford Poole. DeKalb: Northern Illinois University Press.

Cicero, 1991. *On Duties,* ed. M. T. Griffin and E. M. Atkins. Cambridge: Cambridge University Press.

Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality.* Cambridge: Cambridge University Press.

Constant, Benjamin. 1988. "The Liberty of the Ancients Compared to That of the Moderns." In idem, *Political Writings,* ed. Biancamaria Fontana. Cambridge: Cambridge University Press.

Copi, Irving M. 1982. *Introducton to Logic.* New York: Macmillan.

Davidson, Donald. 1982. *Essays on Actions and Events.* Oxford: Clarendon Press.

Foot, Philippa. 1972. "Morality as a System of Hypothetical Imperatives." *The Philosophical Review* 81: 305–16.

Friedman, Jeffrey. 1997. "What's Wrong with Libertarianism." *Critical Review* 11(3): 407–67.

Friedman, Milton. 1962. *Capitalism and Freedom.* Chicago: University of Chicago Press.

Hayek, F. A. 1976. *Law, Legislation and Liberty,* vol. II: *The Mirage of Social Justice.* Chicago: University of Chicago Press.


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

von Humboldt, Wilhelm. 1993. *The Limits of State Action*, ed. J. W. Burrow. Indianapolis: Liberty Fund.

Hume, David. 1978. *A Treatise of Human Nature*, ed. L. A. Selby-Bigge, rev. P. H. Nidditch. Oxford: Clarendon Press, 1978.

Kant, Immanuel. 1964. *Groundwork of the Metaphysics of Morals*, trans. H. J. Paton. New York: Harper & Row.

Kelley, David. 1998. *A Life of One's Own: Individual Rights and the Welfare State.* Washington, D.C.: Cato Institute.

Locke, John. 1979. *An Essay Concerning Human Understanding.* Oxford: Clarendon Press.

Locke, John. 1997. *Political Essays*, ed. Mark Goldie. Cambridge: Cambridge University Press.

Marsilius of Padua. 1956. *Defensor Pacis: The Defender of the Peace*, trans. Alan Gewirth. New York: Harper & Row.

Overton, Richard. 1943. "The Commoner's Complaint." In *Tracts on Liberty in the Puritan Revolution*, ed. W. Haller. New York: Columbia University Press.

Overton, Richard. 1997. "An Arrow Against All Tyrants." In Boaz 1997b.

Palmer, Tom. 1998. "G. A. Cohen on Self-Ownership, Property, and Equality." *Critical Review* 12(3): 225–52.

Parfit, Derek. 1986. *Reasons and Persons.* Oxford: Oxford University Press.

Rasmussen, Douglas B., and Douglas J. Den Uyl. 1991. *Liberty and Nature: An Aristotelian Defense of Liberal Order.* La Salle, Ill.: Open Court.

Ridley, Matt. 1996. *The Origins of Virtue: Human Instincts and the Evolution of Cooperation.* New York: Viking.

Sandel, Michael. 1982. *Liberalism and the Limits of Justice.* Cambridge: Cambridge University Press.

Schmidtz, David, and Robert E. Goodin. 1998. *Social Welfare and Individual Responsibility.* Cambridge: Cambridge University Press.

Sidney, Algernon. 1990. *Discourses Concerning Government*, ed. Thomas G. West. Indianapolis: Liberty Fund.

Smith, George H. 1991. "Philosophies of Toleration." In idem, *Atheism, Ayn Rand, and Other Heresies.* Buffalo: Prometheus Press.

Strawson, P. F. 1993. "Freedom and Resentment." In *Perspectives on Moral Responsibility*, ed. John Martin Fischer and Mark Ravizza. Ithaca: Cornell University Press.

Thompson, D'arcy Wentworth. 1966. *On Growth and Form*, abridged ed. Cambridge: Cambridge University Press.

Thucydides. 1986. *History of the Peloponnesian War*, trans. Rex Warner. New York: Penguin Books.

Tierney, Brian. 1983. "Tuck on Rights: Some Medieval Problems." *History of Political Thought* 4(3): 429–41.

Tierney, Brian. 1988. "Conciliarism, Corporatism, and Individualism: The Doctrine of Individual Rights in Gerson." *Cristianesimo Nella Storia* 9: 81–111.

Tierney, Brian. 1989. "Origins of Natural Rights Language: Texts and Contexts, 1150–1250." *History of Political Thought* 10(4): 616–46.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Tierney, Brian. 1991. "Marsilius on Rights." *Journal of the History of Ideas* 52 (January-March): 3–17.

Tierney, Brian. 1998. *The Idea of Natural Rights*. Atlanta: Scholars Press.

de Vitoria, Francisco. 1991a. "On the American Indians." In idem, *Political Writings*, ed. Anthony Pagden and Jeremy Lawrance. Cambridge: Cambridge University Press.

de Vitoria, Francisco. 1991b. *The Rights and Obligations of Indians and Spaniards in the New World*, reconstructed by Luciano Pereña Vicente. Salamanca: Universidad Pontifica de Salamanca.

Walwyn, William. 1989. *The Writings of William Walwyn*, ed. Jack R. Michael and Barbara Taft. Athens: University of Georgia Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Jeffrey Friedman*

# THE LIBERTARIAN STRADDLE: REJOINDER TO PALMER AND SCIABARRA

ABSTRACT: *Palmer's defense of libertarianism as consequentialist runs afoul of his own failure to provide any consequentialist reasons for libertarian conclusions, and of his own defense of nonconsequentialist arguments for the intrinsic value of capitalism-cum-negative freedom. As such, Palmer's article exemplifies the parasitic codependency of consequentialist and nonconsequentialist reasoning in libertarian thought. Sciabarra's defense of Ayn Rand's libertarianism is even more problematic, because in addition to the usual defects of libertarianism, Rand adds a commitment to ethical egoism that contradicts both her concern for the consequences of capitalism and her commitment to the rights of everyone, not just herself.*

Tom G. Palmer's Reply (1998b) to "What's Wrong with Libertarianism" (Friedman 1997) is useful in affirming the thesis of my article, as much by virtue of its failure to deal with the substance of my arguments as by its object demonstration of the workings of the "libertarian straddle" I identified. So—wherever possible confining to end notes rejoinders to Palmer's accusations and misreadings[1]—I will concentrate here on what is missing from his Reply: any solution to the conundrum I set forth in "What's Wrong with Libertarianism." I will also take the opportunity to point out some problems with Chris Matthew Sciabarra's more civilized response to my article, while underscoring evi-

*Critical Review* 12, no. 3 (Summer 1998). ISSN 0891-3811. © 1998 Critical Review Foundation.

The editor thanks Justin Weinberg for comments.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

dence in Richard Epstein's, Edward Feser's, and Am Feallsanach's articles of the widespread and damaging effects of the libertarian straddle.

Libertarianism, I maintained, yokes together two disparate kinds of reasoning, consequentialist (or "teleological") and nonconsequentialist (or "deontological"). The first is the province of free-market economists and other social scientists, who contend that laissez-faire capitalism produces desirable consequences. The second is the realm of libertarian philosophers, who contend that because of its intrinsic justice, laissez faire is desirable a priori, *regardless* of its consequences. These two kinds of reasoning render each other superfluous. If libertarian philosophy is valid, there is no need to investigate the empirical consequences of laissez faire. And if the a posteriori consequences of laissez faire need to be investigated, then there is no need for a priori libertarian philosophy.

However, I argued, nonconsequentialist libertarian philosophy not only renders libertarian social science superfluous, it positively undermines its validity—unless we are to believe that divine providence has so ordered the universe that the same libertarian institutions that are, according to empirical social science, *instrumental* to "peace, prosperity, cooperation, knowledge, social harmony, etc." (Palmer 1998b, 341) also happen to be the institutions that philosophers know (prior to any empirical research) are *intrinsically* just. While it is, of course, conceivable that sound consequentialist and nonconsequentialist reasoning could independently produce libertarian conclusions, this result is so unlikely that it raises the possibility—which I confirmed through an analysis of several recent libertarian works—that libertarian social science is, as currently practiced, an ideological tool designed, as it were—although subconsciously—to buttress philosophically preordained conclusions. The ideological function of libertarian social science stems from its practitioners' implicit belief that laissez-faire capitalism is intrinsically just. In parallel fashion, the ideological function of libertarian philosophy stems from its practitioners' implicit assumption that libertarian social science delivers an a posteriori case for laissez-faire capitalism. The symbiosis of libertarian philosophy and social science is the "libertarian straddle."

Palmer maintains that I suggested that the libertarian straddle is the result of a "conspiracy" among libertarians (Palmer 1998b, 339, 344), but of course I did not. It is a matter not of conspiracy, but of the way the human mind naturally tends to use any means at its disposal to defend its ideological commitments.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Nor is it true, as Palmer contends, that the convergence of philosophy and social science upon libertarian conclusions can be accounted for by the fact that both approaches study the same subject. The reality is that philosophy and social science do *not* study the same subject, in any but the most trivial sense. Yes, both philosophy and social science study "humanity" (Palmer 1998b, 340); but social scientists investigate what *is and has been* done by humanity; moral philosophers think about what *should be* done.

Moral philosophy need not, however, be completely disconnected from what is and has been done. It is true that if one decides that certain social arrangements—such as the right to possibly unequal amounts of private property—are intrinsically valuable (perhaps as expressions of individual rights or of freedom), one need have no recourse to social science in assessing the legitimacy of those arrangements. The conclusion is formed in the silence of the philosopher's study: the social arrangements in question are considered ends in themselves. But if one decides that ends such as happiness or beauty are intrinsically valuable, then one will need to go out into the world and undertake empirical research to try to determine which social arrangements are instrumental to those ends.

The second type of moral philosophy is the type I was calling for. But the unfortunate fact is that libertarian philosophers do routinely proclaim the justice of laissez-faire capitalism not on the basis of its empirical effects, but on the basis of its alleged instantiation of individual rights or freedoms. How, then, in the absence of supernatural intervention, are we to account for the convergence of their views with those of the social scientists who make similar proclamations, but based on the study of the empirical effects of capitalism?

Palmer evades this question by ignoring the way libertarian philosophy is actually practiced. Unwittingly adopting as his own precisely the ideal that I articulated in "What's Wrong with Libertarianism"[2]—the consequentialist (or hypothetical-imperative) approach that would rely, for its political recommendations, on the results of empirical research—Palmer claims that this is the approach libertarian philosophers already take. Yet the "libertarians" Palmer adduces in support of this claim—Aristotle, Aquinas, Grotius, Pufendorf, Locke, Smith, and Hume—were not, in fact, libertarians. And Palmer's other example, Hayek, not only failed to oppose *all* state intervention in the market, as libertarians do; his opposition to *most* intervention invariably smuggled in nonconsequentialist considerations. For instance, as Feser's article in this issue of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

*Critical Review* makes clear, Hayek laid enormous emphasis on the argument that since "injustice" is commonly thought to require intentional action by some agent, and since market outcomes are not determined by such actions, market outcomes cannot be called "unjust." But this purely linguistic argument has nothing to do with the alleged empirical consequences of the free market. (It also fails as nonconsequentialist philosophy, since a set of outcomes need not be "unjust" for it to be undesirable and thus the object of reform.) Similarly, Hayek assumes that the coercive imposition of a value such as equality is inherently objectionable, regardless of economic or other consequences; the only value to which such an assumption would not apply is liberty—making liberty categorically, not hypothetically, valuable. In these ways, and in his version of the rule of law (see Williams 1997), Hayek tries to close the case against egalitarian redistribution a priori—without regard to whether markets produce more prosperity or other "goods" than central planning does.

Thus, there is quite a gulf between the "libertarian" philosophers Palmer cites and the hypothetical-imperative libertarianism he now embraces. Meanwhile, Palmer's Reply never mentions actual libertarian philosophers, such as Robert Nozick, Murray Rothbard, Jan Narveson, and Loren Lomasky. The standard works of these authors are nothing if not categorical, and empirical considerations are almost entirely absent from them.[3] Palmer may wish things were different, and I certainly do, but wishing won't make it so.

What *would* make it so, I argued, is for libertarians to stop straddling the line between consequentialism and nonconsequentialism. To encourage them to get off the fence and, moreover, to choose consequentialism over nonconsequentialism, or teleology over deontology, or hypothetical over categorical imperatives, I traced the roots of libertarianism to the Enlightenment project that produced the discipline of economics,[4] suggesting that nonconsequentialism is a betrayal of the origins of libertarianism and, more importantly, a betrayal of the origins of sensible libertarians' own commitment to their creed. Libertarians tend to think libertarianism would be *good* for people, because (they believe) it would make for a more prosperous, less contentious, more peaceful, less frustrating society. If this is why one is a libertarian, it should be the basis on which one theorizes and argues for her creed. But theories and arguments grounded on the good consequences of libertarianism will have to be tentative as well as hypothetical—because they will depend on ever-changing empirical research into whether lib-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ertarianism really *would* be good for people. To escape this uncertainty, it is tempting to make libertarianism into a free-standing philosophical doctrine based on the inherent justice of laissez faire—turning one's back on the disputable real-world consequences that drew the libertarian to her doctrine in the first place.

The conundrum outlined in "What's Wrong with Libertarianism"—the tension between a priori, "philosophical" and a posteriori, "empirical" approaches to libertarianism—was intended to explain the stark fact that libertarian social science is not, at present, any more tentative and hypothetical than libertarian philosophy is consequentialistic. As with my evidence for the nonconsequentialist nature of libertarian philosophy, Palmer ignores the evidence I presented for the dogmatism of libertarian social science. Any nonlibertarian who is familiar with libertarian thought will be astonished at the Panglossian quality of Palmer's depiction of it.

Those who are not familiar with libertarianism, however, need only look at the other article in this issue by Palmer (1998a), as well as those by Epstein and Feallsanach, to see how distorted is the picture of libertarianism Palmer gives in his Reply to me (1998b). These other articles each dispute G. A. Cohen's argument that self-ownership does not necessarily issue in a libertarian form of "world-ownership." This is part of Cohen's larger project of disabusing libertarians of the habit of unquestioningly equating their political conclusions with the values they consider desirable: not only self-ownership, but freedom. Thus, Cohen is attacking the simplistic means by which *nonconsequentialist* libertarianism is frequently vindicated; the philosophical equation of libertarianism with self-ownership and freedom that he questions is completely independent of the empirical consequences of libertarianism in the real world. In rebutting Cohen, Palmer is, like Epstein and Feallsanach, defending nonconsequentialist libertarianism, contrary to Palmer's assertion that libertarian philosophy is consequentialist.

Yet in the course of their defenses, all three authors appeal to Locke's claim that unless property could be individuated, human beings would starve. This is, indeed, a claim about the beneficial empirical consequences of private property, but it has no conceivable relevance to Cohen's nonconsequentialist attack on libertarianism. It is a non sequitur in two senses. First, private property is not equivalent to libertarianism; we would not starve if—as is now the case—our private property were heavily taxed and regulated. Second, one cares about human starvation only if human happiness, or the alleviation of human misery,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

is one's ultimate end; but Cohen is not discussing what form of society will alleviate human misery, because that is not what libertarian philosophers claim is the merit of libertarianism. Rather, they claim that libertarianism is just because it uniquely embodies self-ownership or freedom, regardless of the empirical consequences of making these values paramount. By falling back on consequentialism to defeat Cohen's nonconsequentialist argument, Palmer's, Epstein's, and Feallsanach's use of Locke is a perfect example of libertarian straddling. (Feallsanach [1998, 321] alone recognizes the problem, but his solution is to assert, without explanation, that "consequences are appropriate material for the intuition to work on, even for a deontological moral theory." Admittedly, philosophers often proceed as if their intuitions about consequences are relevant, but this cannot justify the practice of erecting deontological superstructures atop these consequentialist foundations.)

The heart of my article was the suggestion that conscientious libertarians, such as Boaz, find themselves unable to stop their straddling because neither consequentialist research nor nonconsequentialist philosophizing succeeds in credibly delivering the libertarian conclusions they desire. Combined with each other, however, the two forms of reasoning, a priori and a posteriori, *appear* to achieve this end. By shifting back and forth between social science and philosophy, one can (inadvertently) obscure the failure of either approach to justify libertarian conclusions.

At the end of my article, I elaborated a specific form of "postlibertarian" consequentialist research that could end the straddling and revive the Enlightenment aspiration to investigate the social world *with an open mind* in the hope of improving life on earth. Anyone who paid attention to its last quarter would therefore have had to realize that the purpose of "What's Wrong with Libertarianism" was, despite the provocative title, constructive. However, to demonstrate the need for a "postlibertarianism," I had to devote the first three quarters of the essay to establishing the seriousness of the problems with libertarianism. Unhappily, Palmer sees only this negative aspect of the essay, ignoring its positive dimension, and he reacts in just the ideological spirit I was urging libertarians to abandon. Moreover, Palmer not only fails to refute my account of libertarian straddling; he tends to confirm it, both in his defense of the libertarian view of "freedom" (see Part II below) and in his failure to provide the slightest reason to conclude that, according to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the standards of the hypothetical imperative that he now embraces, one should reach libertarian conclusions (see Part I).

Before substantiating these contentions, let me say something about the mode of "What's Wrong with Libertarianism" and of the present Rejoinder. Both articles are forms of intellectual history. That is, they try to do more than simply identify logical mistakes (in this case, mistakes in libertarian thought), for they are attempts to explain why the same rather obvious mistakes get made over and over again. Palmer (1998b, 343) bristles at this form of analysis, asserting that it somehow amounts to a "demeaning and personal attac[k] on . . . the motives of libertarian writers." But intellectual history is an inevitable and, I believe, a valuable part of *Verstehen*. Attempting to understand not only *what* someone is doing, but *why* he may go wrong in doing it—even with the *best* of motives—is an inherent task not only of the social sciences but of daily life (see Hayek 1948). But, in the attempt, we have to go a little deeper than the overt intentions of those we are trying to understand. Otherwise, we would never be able to *explain* (as opposed merely to identifying) their errors, and therefore would never achieve the goal of understanding. If we fail to go deeper than motives, we will have to attribute error to mendacity—as Palmer incorrectly assumes I am doing—; or we will have to think of those with whom we disagree as making their (putative) errors out of stupidity; or else we will have to consider their errors unintelligible, as if those who made them were perverse automatons who cannot really be understood by other human beings.[5] These alternatives, it seems to me, are far more disrespectful than is the practice of intellectual history.

A different way of putting the point is to say that if we are to understand those with whom we disagree, we must go beyond their conscious motives and examine the subconscious impulses to which their ideas and assumptions may commit them.[6] As Weber (1978, 9) put it, "'conscious motives' may well, even to the actor himself, conceal the various 'motives' and 'repressions' which constitute the real driving force of his action." In going deeper than motives, or in going deeper than conscious motives, one does not demean those whose mistakes one is discussing; on the contrary, one pays them the compliment of empathatic understanding. Whether this understanding ends up being *subjectively* insulting to those whose errors are being discussed depends, of course, on their temperament, and this cannot be helped; whether it ends up being *objectively* insulting, however, depends solely on the accuracy of the understanding. Palmer, however, seems to believe that it is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

bad manners to try to understand why libertarians make the mistakes they make, and he seems to think, therefore, that merely listing the conclusions of my attempts to understand libertarians' mistakes shows that I have demeaned them personally. But he consistently fails to dispute the detailed evidence I presented in order to justify these conclusions, so his charge that I have insulted libertarians can only be taken to be a reflection of his subjective temperament, not of the objective failure of my arguments to hit their marks.

As Weber (1978, 5) points out, "sympathetic self-analysis" may help us detect the origins of "errors, including confusion of problems." Having been a libertarian myself, I tried in my article, like any decent biographer, anthropologist, psychologist, or political scientist would, to put myself (back) into the shoes of those I was discussing. The reader can judge for herself whether the shoes fit.

## I. LIBERTARIANISM AS A HYPOTHETICAL IMPERATIVE

Palmer opens with a fine lecture on the difference between categorical and hypothetical imperatives, but, as with most of the rest of his (rather heavy-handed) pedagogy, this lesson is a non sequitur. Consequentialism, which I advocate in "What's the Matter with Libertarianism," is the primary form of hypothetically imperative moral reasoning. Thus, it should be obvious that I, too, favor the use of hypothetical imperatives, despite not having employed that terminology. So when I adduced, as one of many examples of libertarian straddling, the compliment that Palmer (1997, 416), in an appendix to Boaz's *The Libertarian Reader*, pays to libertarianism for having "brought together" (a) the "moral imperatives of peace and voluntary cooperation" and (b) "a rich understanding of the spontaneous order made possible by such voluntary cooperation, and of the ways in which coercive intervention can disorder the world and set in motion complex trains of unintended consequences," I could hardly have done so, as Palmer infers, because I assumed that all moral reasoning must be categorical.

What I did assume is that if Palmer meant that the "rich understanding" of the consequences of libertarianism is what *justifies* "the moral imperatives of peace and voluntary cooperation"—as he now maintains—then that is what he would have written. To write instead that libertarianism "brings together" moral imperatives and their consequences entails, strictly speaking, that they must already be independent

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of each other; otherwise, they could not be brought together in the first place, since they would not "exist," as it were, apart from each other. To a consequentialist, positive consequences are a prerequisite of any moral imperative, so the latter cannot be antecedently available to be "brought together" with the former.

Perhaps Palmer vaguely wrote "brought together" instead of "are justified by" so as to avoid saying expressly that the alleged positive consequences of libertarianism are what make it morally imperative. Saying this would, after all, indicate a serious break with the libertarian orthodoxy, which, in its "philosophical" moment, holds that absolute private property should be respected because it is intrinsically just, irrespective of its consequences. Whatever the reason Palmer obscured his real meaning, however, he should not fault a reader for failing to detect it.[7]

Those who read only Palmer's Reply would never know that I did not just assert that libertarianism has a persistent nonconsequentialist moment; I attempted to prove it. I devoted a great deal of attention to the ways that books by Palmer's colleague, David Boaz, and Palmer's hero, Charles Murray, "bring together" consequentialist *and* nonconsequentialist claims for libertarian rights. For example, Boaz grounds the right to self-ownership not on its beneficial consequences, but on Murray Rothbard's claim that the only alternatives to self-ownership are inegalitarian and therefore *unjust*—a priori. And Boaz grounds the right to the private ownership of real property not on *its* beneficial consequences, but on the a priori Lockean notion that by laboring, one "mixes" the labor one "owns" (à la Rothbard) with the objects on which one works—transforming the a priori justice of self-ownership into that of world-ownership. Neither of these claims is hypothetical, and both of them, therefore, obviate research into the empirical consequences of private property. If Palmer disagreed with such claims, he failed to say so in his appendix to the companion volume of the book in which Boaz made them.

Both text and context, then, suggested to me that Palmer's "brought together" was a classic case of libertarian straddling. If I was wrong about that, however, I apologize, and I congratulate Palmer for having gotten off the fence—and on the right side of it, too. Now, in contrast to his appendix to *The Libertarian Reader*, he seems forthrightly to join me in condemning categorical libertarian rights, whether to person or property; and he agrees that rights can be justified only if they produce "good consequences" (Palmer 1998b, 341). I welcome Palmer to the ranks of consequentialists.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

But I wonder if this is a club of which he really wants to be a member, since, even while he now maintains that libertarian conclusions are sustainable only for consequentialist reasons, *his Reply mentions no such reasons*, and it fails to answer a single one of my specific criticisms of the reasons, offered in their social-scientific moments, by Boaz, Murray, and David Conway—who, between them, draw on every consequentialist-libertarian argument extant at the end of the twentieth century. My point was not merely that libertarians should abandon their overt non-consequentialism; it was that because they have not yet done so, their consequentialist social science produces libertarian conclusions precipitously where none are justified—because they covertly continue to believe that libertarianism is just, regardless of its consequences. In response, one cannot very well defend libertarian conclusions, as Palmer tries to do, merely by maintaining that modern libertarianism is consequentialistic (even if this were true, which it is not). One must further present some reason for thinking that consequentialism will yield libertarian conclusions. Otherwise, we are back, in practice, to a libertarianism that "brings together" moral imperatives and consequences by using moral imperatives to fill in the gaps when empirical research fails to do the job, and by using empirical research to lend plausibility to conclusions that most people find unacceptable when reached by means of categorical moral imperatives.

Palmer contends that consequentialism is best practiced at the level of rules or systems of rules rather than at the level of individual actions. I agree wholeheartedly.[8] But Palmer does not give us any grounds for believing that, practiced at the level he and I prefer, consequentialism *does* lead to libertarianism. What reason have we to think that rules which treat people as if they have *inviolate* private property rights, rules which therefore bar *any* form of intervention or redistribution, will contribute more to "peace, prosperity, cooperation, knowledge, social harmony, etc." (Palmer 1998b, 341) than rules allowing the regulation and redistribution of private property—as do the rules of modern social democracies? It bears repeating that private property, which Palmer quotes Hume as defending, is not the same thing as *undiluted* private property. What is at issue when the topic is consequentialist libertarianism is not the benefits of private property or of the rule of law per se, but the benefits of rules that protect *absolute* private property.

The gravamen of the first section of my article (Friedman 1997, 409–26), plus a later subsection entitled "Orthodox Consequentialism" (ibid., 439–42), was that the consequentialist arguments we get from the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

likes of Murray, Boaz, and Conway (including such favorites of Palmer's appendix as public-choice and spontaneous-order arguments) do not justify *absolute* private property with any degree of adequacy. Palmer now says not a word in defense of these or any other specific consequentialist arguments for libertarianism.[9] My article was not about some *imaginable* or *logically possible* defects in libertarian consequentialism. Rather, I pointed to (what I claimed are) fatal flaws in every major variant of real, existing consequentialist libertarianism—fatal flaws, that is, in consequentialist libertarianism as we know it (to the extent that it is present) in the works of Buchanan, Tullock, Hayek, Murray, et al., and as reflected, in turn, in the books by Boaz, Conway, and Murray that I was discussing.

Half of the libertarian straddle involves the deployment of spontaneous-order, public-choice, and other specific consequentialist claims as grounds for antigovernment conclusions (which these claims cannot, however, sustain without the assistance of deontology). In this moment, deontology licenses (in the minds of putatively consequentialist libertarians) the doctrinaire thinking that is reflected in the leaps of logic and propagandistic tone typical of so much libertarian social science.[10] For Palmer to respond to my argument about the way the libertarian straddle taints libertarian consequentialist scholarship merely by contending that, in theory, a consequentialism pitched at the level of rules or systems of rules *could* justify libertarian conclusions is another non sequitur. I nowhere disputed the point. What I disputed is whether, in fact, consequentialist libertarians *have* successfully justified libertarian conclusions. This is the challenge any consequentialist libertarian who chooses to engage with "What's Wrong with Libertarianism" would have to meet, but Palmer, depite his self-proclaimed consequentialism, seems entirely uninterested in it.

It seems plausible that this huge anomaly in Palmer's Reply may confirm my description of the differences between the libertarian and the postlibertarian mindsets. Although Palmer will now accuse me of *attacking* his motives, some attempt to *analyze* them is necessary if we are to understand why Palmer, the declared consequentialist, does not act consistently with this declaration. It is my claim that the libertarian straddler is interested, at best, in going through the motions of empirical investigation in order to reach predetermined conclusions. Such a claim may be "uncharitable" (Palmer 1998b, 350), but—as I argued in my essay—it has the advantage of empathetic verisimilitude. Palmer's consequentialism purports to reach libertarian conclusions without any

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

rigorous demonstration (indeed, any demonstration at all) that libertarianism *actually* would produce good results. One is moved to wonder about a version of consequentialism that displays so little interest in empirically demonstrated consequences—a political philosophy that is supposed to issue in a hypothetical imperative, but that does not bother to argue for the posited hypothetical. One may reasonably conclude, it seems to me, that Palmer's Reply itself exemplifies the libertarian straddle. This gives it broader relevance.

## II. WHAT'S FREEDOM GOT TO DO WITH IT?

To find decisive evidence for this "uncharitable" interpretation, we need only look to the second half of Palmer's Reply. Here, Palmer defends (1) the liberal assumption that freedom is intrinsically (and supremely) valuable; (2) the classical liberal insistence that true freedom is negative freedom; and (3) the libertarian equation of negative freedom with absolute private property rights. I had contended that all three of these moves are illegitimate. Before examining the details of Palmer's response, however, we might ask ourselves: Why does he defend these moves at all?

Palmer's larger claim, remember, is that libertarian thinkers do *not* shift back and forth between teleology and deontology; my contention that they do is, according to Palmer (1998b, 341), nothing but a vicious libel, for I have failed to understand that libertarian moral claims are based on the "good consequences" of capitalism. But what do the three moves Palmer is now defending have to do with good consequences? Combined, these moves (if valid) show not that laissez-faire capitalism is conducive to "life, prosperity, peace, cooperation, knowledge, social harmony, etc.," (ibid.), but that laissez-faire capitalism-cum-negative-freedom is intrinsically valuable, regardless of its consequences. The inherent justice of capitalism follows tautologically, with no empirical investigation necessary. Why, then, does Palmer the hypothetical-imperative advocate spend fully half of his Reply defending these three moves? If the libertarian, laissez-faire capitalist version of freedom is equivalent to negative freedom, and if negative freedom is intrinsically and supremely valuable, then we should be libertarians regardless of what social science tells us about the consequences of libertarianism.

In short, contrary to his protestations, it would appear that Palmer's libertarianism—orthodox libertarianism—is not consequentialist after all. If libertarianism is just, regardless of its consequences, then it need

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

not concern Palmer that I have rebutted the extant arguments for its good consequences; and he need not bother to provide alternative arguments to the same effect. He can pronounce in favor of the theoretical possibility of a sound form of consequentialist libertarianism without worrying about whether it actually exists, and without so much as speculating about what might justify its laissez-faire conclusions. For, at bottom, none of that is very important: no matter what its consequences, after all, laissez faire instantiates negative freedom, and negative freedom is all-important. Thus, all the abstract talk of consequences functions (unintentionally) as . . . propaganda. What really makes libertarianism valid is its embodiment of human freedom.

If this analysis is correct, then, as an illustration of the libertarian straddle, Palmer's Reply could hardly be bettered.

## III. FROM LIBERALISM TO CLASSICAL LIBERALISM TO LIBERTARIANISM, A PRIORI

Now let me discuss, in turn, the specifics of Palmer's defenses of the intrinsic value of freedom, the equation of freedom with negative freedom, and the equation of negative freedom with absolute private property.

The intrinsic value of freedom was the subject of only one paragraph and one end note in my article (Friedman 1997, 427 and 465n11)—the topic of which was, one should remember, what's wrong with the libertarian form of liberalism, not what's wrong with liberalism in general (which would require a much longer treatise [e.g., Friedman 1999]). Still, there were those two brief discussions, with which Palmer's several pages of rebuttal never manage to come to grips.[11] In marked contrast to Palmer's hands-off approach to demonstrating that libertarianism would produce good consequences, however, here he is nothing if not energetic, devoting more than a quarter of his article to defending this nonconsequentialist claim.

I argued that the problem with conferring intrinsic value on freedom is expressed in the "right to do wrong." This so-called right entails, I wrote, that "it is intrinsically valuable to be able to do what is valueless" (Friedman 1997, 465n11). Palmer's first response is a lecture on logical contradiction, but his lecturing begs the question. The question I asked is not the one Palmer's logic textbook allows him to answer: whether "It is good to do X" is verbally the same as "It is good to be allowed to do X" (Palmer 1998b, 347). I was asking *why* we should be allowed to

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

do what is bad; that is, why we *should* have a right to do something that, being wrong, we *should not* do. Palmer's claim (1998b, 348) that there is an "all-important" difference between doing something bad, on the one hand, and, on the other, being allowed to do something bad, such that there is no prima facie contradiction in the "right to do wrong," takes for granted the very liberal assumption—that there is something worthwhile about being allowed to do what is worthless—that is at issue.

Palmer's next response to my questioning of the intrinsic value of freedom is equally beside the point. He contends (1998b, 349) that freedom of the will exists and "is at the foundation of the entire libertarian tradition," contentions I would dispute only by replacing the word *libertarian* with the broader term *liberal*. Palmer devotes an enormous amount of space to condemning me for denying the existence of free will, but it was its *value*, not its existence, that I denied. Unfortunately, Palmer, like his liberal predecessors, proceeds straight from the existence of free will to its value, providing no more basis for doing so than the following two sentences:

> As human beings we are rational creatures capable of choice and therefore capable of being held accountable and responsible. The exercise and development of this capacity is intrinsically valuable. (Ibid., 350)

The first sentence is a non sequitur, since the existence of free will was never at issue. The second sentence begs the question that *is* at issue—which is precisely whether free will is, in truth, intrinsically valuable. The only way to connect the first sentence to the second is by committing still a third mistake, the naturalistic fallacy. The fact that we have free will no more makes its exercise good than the fact that we are mortal makes death good.

Palmer does well, however, to remind us of the connection in liberal thought between the existence of free will and the value of its exercise—no matter how illogical this connection is—because *if* freedom of action is valuable because it allows the exercise of freedom of the will, then one is led to endorse a "positive" view of freedom—meaning, in this context, a view of freedom as "doing whatever I want to do," i.e., freedom to do what I will—which is the very type of liberty Palmer, in his defense of negative liberty, condemns as "license." It is to actualize positive freedom (in this sense of the term) that contemporary liberals,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

such as the Rawls of *A Theory of Justice*, emphasize the need to ensure that, as much as possible, everyone should have the means to do what they wish. Consequently, contemporary liberals tend to favor the egalitarian redistribution of property, contrary to the tenets of what is called "libertarianism"—yet they do so because they believe in exactly the thing that Palmer has just told us is the heart and soul of the "libertarian" tradition: the normative commitment to free will and, hence, free action. It is not I, as Palmer claims, who "plump[s] for 'positive' freedom" (1998b, 345);[12] it is the despised left-liberals of the "Harvard faculty lounge" (ibid., 346)—because, as it turns out, they are better libertarians than Palmer is. They are the ones who take seriously Palmer's commitment to liberty of action as a manifestation of the allegedly intrinsic value of liberty of the will, and who want to ensure liberty of action for all by making available to all the means—the property—with which we may do what we will. The real question is why Palmer and his fellow "libertarian" philosophers *oppose* property redistribution, given their devotion to freedom of the will.

The answer is, of course, that they insist that the only "real" liberty is the negative kind: freedom from coercion. The negative definition, they insist, is the "correct" one. Palmer (1998b, 344) defends this move on the ground that "we already *have* a good word to denote ability. It's 'ability.'" What is supposed to follow from this? Why shouldn't "liberty" be defined in such a way that it is synonymous with "ability," when it is the *ability* to do as one wills that is, by Palmer's own argument, the valuable form of liberty? Palmer's logic textbook tells us that "definitions are tools of the mind" (ibid.). If our definition of the word *liberty*, or of *freedom*, is a tool designed to help us determine what kinds of actions constitute "the exercise and development of [free will, which] is intrinsically valuable" (ibid., 350), then the fact that this tool happens to be similar to, or even identical with, another one, the word *ability*, is irrelevant.

But, I must admit, to reach this conclusion I have juxtaposed Palmer's argument for the intrinsic value of freedom against his argument—six pages earlier—for the negative definition of freedom. It never occurs to Palmer that his own argument about the value of freedom should make him a proponent of its positive definition. Instead, when he considers the question of defining freedom, he uses a quite different criterion of a good "tool" than that it should express the allegedly intrinsic value of free action. Rather, he assserts, the definition should "distinguish between different kinds of actions" (1998b, 344). He seems to think that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

kinds of actions sort themselves out naturally, as if we find one "kind" of action lying on the ground, another flying through the air, and conclude automatically that they require two different words, such that if "ability" applies to one, then "freedom" must apply to the other. Obviously, however, this is not the way philosophy should proceed.

What makes for different "kinds" of actions when we are doing normative philosophy will be determined by whatever it is that we take to be good about actions (or their consequences). The question raised by Palmer's own apotheosis of free action, then, is why freedom from coercion *should* be considered a different "kind" of the same thing—freedom—as action that is freely willed. Neither Palmer nor any other libertarian has given us a reason to think that freedom from coercion is (intrinsically) valuable, as freedom of action supposedly is. Thus, to insist on the negative definition of freedom is to create a useless tool, and to repudiate the positive definition is to throw away a useful one. More important, the insistence on the negative definition of freedom *substitutes for* any argument as to why, if freedom of action is intrinsically valuable as an expression of freedom of the will, freedom of action isn't the kind of liberty we should aim for, even if it means coercively equalizing people's property holdings. (A connected problem, too obvious to labor, is that the inclusion of "coercion" in the definition of negative "freedom" makes the definition completely indeterminate, since coercion is simply the antonym of freedom.)[13]

The basis of the "libertarian" resistance to "positive liberty" is, then, like Hayek's resistance to "social justice," entirely verbal: "That's not what liberty 'really' means." However, contained in this bit of (yes) Scholastic essentialism is something much worse: an illicit borrowing of the normative force derived from the *positive*-libertarian argument about the intrinsic value of free will. First (speaking logically, not historically) liberals argue, as Palmer does, for the value of free will and the type of action it produces; then they attach the words *freedom* and *liberty* to that type of action, lending these words normative luster; but then "libertarians" want to retain the normative luster produced by the argument from free will while abandoning its positive-libertarian, egalitarian implications. It can't be done—at least not coherently. The normative weight liberals attach to freedom pushes them in the direction of positive liberty for all; when "libertarians" narrow the definition of liberty so as to resist this impetus, they deprive liberty of its normative appeal.

Finally let us consider the question of whether, even if freedom is intrinsically valuable, and even if the only type of freedom that is intrinsi-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cally valuable were freedom from coercion, a "libertarian" society would be the upshot, in that such a society should be thought, a priori, better to protect negative liberty than any other. I argued that it should not, because all societies must enforce some distribution or another of liberties and property, and all such enforcement is, at bottom, equally coercive. (One thing Sciabarra [1998, 293], like Palmer, fails to recognize is that "guns" always constrain us, in every form of society, to respect that society's distribution of power and resources.) This does not, as I noted, mean that there is no difference in the amount of freedom people have in different societies; but the difference is not in the amount of coercion that will (in theory) confront them if they violate the legal distribution of property and power. Instead, the difference is in the extent to which that distribution allows one to do what one wants—i.e., the difference is in the amount of positive, not negative, freedom. Thus, I noted, a libertarian society would probably produce a distribution of power, including power over property, that is more egalitarian than a real-world Communist society, in that, in a libertarian society, the state elite would have less positive freedom than it would under Communism, while the general populace would have more. (By the same token, a social democracy would, in theory, spread power, including power over property, even more widely, reducing the positive freedom of those who would be relatively rich in a libetarian society, but increasing the positive freedom of those who would be poor.) But the amount of *negative* freedom available to everyone is exactly the same in the two societies, since "it is as true of Communism as of libertarianism that, so long as I obey the coercively enforced allocation of property titles, 'no man or body of men,'" as Isaiah Berlin put it, "'interferes with my activity.'" I concluded that "what varies between the two societies is the scope of this area, the size of the private sphere . . . not whether its borders are coercively enforced" (Friedman 1997, 430).

In response, Palmer tosses his logic textbook out the window, substituting for the nominalist view that definitions are "tools of the mind" the view that, instead, they are tools of conventional wisdom. If the conventional wisdom tells us, for instance, that Canada in 1944 must have been freer in every sense than Nazi Germany, then I must be wrong to suggest otherwise. So Palmer need not mention exactly what it is that made Canada not only more positively free (meaning that most people could do more of what they willed), but more negatively free, than Germany: is it not *obvious* that Germany was more coercive? Notice that Palmer has unwittingly repeated my own comparison of two

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

societies, substituting Nazi Germany for the Communist society, and Canada for the libertarian society—but that he somehow concludes that the very example I used, altered only in the locales, shows that negative liberty *does* vary across different societies, even though he never rebuts my analysis of how the example actually shows the opposite. Palmer simply ignores my argument that what the example illustrates is that "I have more *positive* liberty under a libertarian [or Canadian] than a Communist [or Nazi] regime: more liberty, that is, to 'attain a goal' of my own choosing (Berlin 1969, 122)" (Friedman 1997, 430). Similarly, in raising the example of rape, Palmer never explains what makes this crime more coercive (as opposed to *worse*) than resistance to it, even though both the rapist and the resister equally use physical restraint or the threat of violence: the rapist against his victim, the victim against the rapist. Palmer's argument is, again, merely an outraged appeal to "common sense": "Freedom is slavery, after all!" (Palmer 1998b, 345). In this respect, as in so many others, Palmer's Reply is depressingly representative of libertarian thinking (cf. Flew 1992 and Narveson 1992).

Palmer's only attempt to come to grips with my argument here occurs when he mentions that in capitalist societies, private property "is largely respected on the basis of custom, morality, and reciprocal respect" rather than coercion (Palmer 1998b, 345). But this proves only that a society in which people willingly obey the laws needs to employ less coercion to enforce them than one in which people are disobedient, which is no defense of *libertarianism* at all. A Communist or Nazi society in which most (but not all) people customarily obeyed redistributive or anti-Semitic laws without being forced to do so by the police would, on Palmer's account, qualify as more libertarian than a society in which most people had to be fined for parking violations.

Palmer's mistake is to confuse the means of enforcing the law with the law's content. It is in the content of libertarian laws, not in the number of times that people break them, that they differ from other types of law. Now it is not in prohibiting murder, rape, or even theft that the content of libertarian laws differs from that of the laws of other types of society. Libertarian laws differ from the laws of a social democratic or, for that matter, a Communist or Nazi society not so much in what they prohibit—i.e., any unauthorized rearrangement of legally validated entitlements—but, instead, in how they consider those entitlements to be distributed. It is not that the category of "theft" does not exist in a Communist, fascist, or social-democratic society; it is that

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

what counts as the "property" that is protected against theft differs. In "What's Wrong with Libertarianism," I called this difference the question of the property "baseline" each type of society takes as legitimate. In a social democracy, the baseline, i.e., the set of legally enforced entitlements, is shaped, at least in part, by some type of egalitarian norm, while in a libertarian society the baseline is whatever pattern evolves spontaneously from people's mutual exchanges. It is tempting—and it is commonsensical, for people who grew up in capitalist societies—to see the libertarian baseline as less coercive than the social-democratic one, but that is the point of calling them both "baselines": they are the starting points of legitimacy, so it would beg the question to see social democracy as *forcing* its egalitarian pattern on a people who are inclined to resist such laws any more than a libertarian pattern (or non-pattern, if you will) would be forced on a people who refused to obey libertarian laws. Both societies will (in principle) just as coercively impose their baselines on people if people choose to violate them. While the libertarian "pattern" evolves out of mutual exchanges, these are exchanges of property whose ownership is every bit as coercively established and protected as are the "re-"distributions upon which social democracy relies.

As I showed at some length, "if we start from a social-democratic baseline, it is *libertarianism* that sanctions coercive aggression: coercive aggression against the persons or property of those who are deprived, say, of their welfare entitlements by the refusal of a libertarian government to enforce them" (Friedman 1997, 429). Only if one begs the question by taking the libertarian baseline to be "natural," and thus anterior to political establishment and enforcement—say, by adopting the Lockean doctrine of the metaphysical magic of labor mixing—can one avoid this reasoning.

## IV. WHAT POSTLIBERTARIANISM IS NOT

One problem with libertarian philosophy is that it is a primitive and rightly superseded form of liberalism, where "liberalism" means a commitment to individual freedom. Most liberals have come to recognize that if freedom of action is good, it may, in theory, require the redistribution of property. The libertarian insistence on the negative definition of freedom is simply a "naive and unreflective" (Palmer 1998b, 352n3)[14] attempt to avoid this conclusion. A second problem is that the notion that negative freedom is, by definition, better protected by libertarian-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ism than social democracy is even more naive and unreflective, grounded as it is in the illusion that the kind of (largely private) property distribution to which we are accustomed is more natural and less coercive than any other. A third problem with libertarian philosophy is that it is a species of liberal philosophy, which maintains (with the exception of utilitarian liberalism) the intrinsic goodness of the ability to do what is bad.

Libertarianism, however, contains within it the resources to overcome all of these problems. These resources can be found in the very thing that leads to the libertarian straddle: the yoking together of deontological and consequentialist reasoning. If libertarians would simply reflect on the matter, I believe they would conclude that it was *not* due to a belief that freedom-cum-private property is intrinsically valuable that they first became libertatrians; instead, what motivated them was a belief that laissez-faire capitalism would be good for people because it would relieve misery and social conflict. Now this is exactly the type of consequentialist reasoning that originally produced liberalism itself: in the Wars of Religion, the protoliberal *politiques* pioneered the thought that tolerating the bad (i.e., heresy) would serve a larger good (i.e., civil peace). But the temptation to absolutize this hypothetical, disputable version of liberalism by shifting its basis to a priori individual rights and the intrinsic value of freedom occurred so long ago that the consequentialist nerve of liberalism is, by now, nearly dead. Not so with libertarianism, which got its start a mere half-century ago in consequentialist economics. Economics is still very much alive in libertarian thought, albeit often corrupted by the incursions of libertarian philosophy. What my article proposed is that libertarians disentangle the two strains of thought, recognize the fatal defects of the philosophical strain, and return to the consequentialist impulse that gave birth to their movement in the first place. This would end the need for Scholasticism about the "right" definition of freedom, for naïveté about the coerciveness of a libertarian society, and for self-contradictorily praising as intrinsically good the ability to do what is intrinsically bad—since it is a desire to maximize the good in a world of imperfect people that leads libertarians, like the early liberals, to want to allow people to do the bad to begin with.

But moving beyond these conundrums would require more than lip-service to some conceivable form of consequentialism: it would require ruthlessly repudiating the libertarian straddling of the past 50 years and, even more importantly, accepting the possibility that as a result, libertar-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ianism will not be sustainable. The bottom line of consequentialism is to instrumentalize one's politics to the achievement of whatever one takes to be the good, and if libertarianism turns out not to be conducive to the good, then libertarianism would have to be rejected.

"Postlibertarianism" refers to any consequentialist research that is self-consciously directed toward some good other than the empty and self-contradictory good of liberty. Postlibertarian research may well conclude that (positive) liberty is instrumentally valuable, whether because, in the form of civil freedom, it leads to civil peace; or because, in the form of economic freedom, it leads to prosperity. It may also conclude otherwise. By the same token, postlibertarian research may be undertaken by anyone, of any background; but because the tension between deontology and consequentialism is so much fresher and closer to the surface among libertarians than among mainstream liberals, it seems likely that a disproportionate number of self-conscious consequentialists will be former libertarians. Hence the prefix in "postlibertarianism."

I hope it is clear, then, why I believe that Chris Matthew Sciabarra has fundamentally misunderstood postlibertarianism. Postlibertarianism is not a fancy term for a new *strategy* (such as the appropriation of postmodern hermeneutics)[15] for achieving the libertarian and liberal aspiration to "liberate humanity," as Sciabarra (1998, 294) implies. It is, on the contrary, an abandonment of that aspiration, necessitated by one's recognition, *inter alia*, of the philosophical incoherence of treating freedom as an intrinsic value. This is something that Ayn Rand not only failed to recognize, but positively obscured—by putting together one of the first, and by far the most successful, of the ideologies of libertarian straddling.

It is possible that a given postlibertarian will conclude that "freedom and individualism" (Sciabarra 1998, 294) are conducive to, say, happiness; and it is possible, as I suggested at the end of "What's Wrong with Libertarianism," that postlibertarians will find, in the demagogic character of mass politics, both echoes of Rand and consequentialist reasons to restrict the power of the modern state. But a postlibertarian would first have to *investigate* whether "freedom and individualism" are, in fact, conducive to happiness, or whether they might not, instead, lead to anomie and misery; and she would have to inquire into the actual extent and effects of demagogic mass politics. While the power of Rand's novelistic dystopias stems from her depiction of the allegedly disastrous consequences of the megastate and its demagogic cultural context, her

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

philosophy obviates the investigation of such consequences by trumping any consequentialist considerations with a doctrine of absolute "rights," and, as well, by branding as immoral "collectivism" a concern for the consequences of state action for anyone but oneself. She fails to recognize that her own defense of *every* "man's rights" is itself collectivistic and altruistic, as is her concern for the dystopian consequences of demagogic politics. Her consequentialism is, therefore, even more confused and short-circuited by nonconsequentialist commitments than is the consequentialism of other libertarian or semilibertarian ideologues, such as Hayek and Rothbard.

That Rand's defense of the intrinsic value of "freedom and individualism" can be couched as a concern for the "deleterious effects" of "statism" on "the subject's consciousness and behavior" (Sciabarra 1998, 295) hardly qualifies Rand as a genuine consequentialist, since "human agency" (i.e., freedom of the will, as manifested in freedom of action) is the criterion against which these effects are judged deleterious (ibid.). With Rand and Sciabarra, therefore, as with all deontological liberals, the only type of empirical investigation we need undertake is designed to expose "power relations" (ibid., 294), and we know in advance that such relations are bad in themselves, by definition. The differential effect of various types of power relations on human well-being is thus a nonissue. The only end to which social science can be instrumental, then, is the "good" of being able freely to choose one's own good—or bad. If this is consequentialism, there is no such thing as nonconsequentialism.

I concede that methodologically, Rand's emphasis on the cultural underpinnings of politics is an improvement over, say, dogmatic rational- and public-choice theory. But merely noticing that politics is connected to culture—the Randian form of "dialectics," which David MacGregor (1997) characterizes as "trivial"—is no substitute for breaking free from the anticonsequentialist fealty to freedom-cum-capitalism, which makes culture and politics but colorful backdrops to one's philosophy. Rand, just as much as any other libertarian philosopher, was dedicated to a political ideal that renders genuine consequentialist research, even into politics and culture, otiose. Even though Rand was clearly convinced by her experience in the Soviet Union that socialism was disastrous for human *welfare* (as distinct from *liberty*), and even though this conviction came through in her novels, it is suppressed in her philosophy, as it is in all orthodox libertarianism, which is therefore free of the vicissitudes of empiricism. Rand's notoriously dogmatic per-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sona, as much as Palmer's unresponsive and self-contradictory Reply, embodies the doctrinaire temptation that makes libertarian philosophy a betrayal of the inherently open-ended, open-minded concern for human well-being that inspired it and that might, conceivably, allow it to be transcended.

NOTES

1. Three examples. First, Palmer (1998b, 351) claims that in describing as an instance of "bourgeois complacency" Charles Murray's one-paragraph "ruminations" on happiness (Friedman 1997, 419, 421)—in which Murray equates happiness with taking actions for which "a substantial amount of responsibility rest[s] on *your* shoulders, whether in a moment (sinking the winning basket) or over many years (making a good living)" (Murray 1997, 32)—my article is uncharitable to Murray. Palmer overlooks the next sentence of my essay: "I am not suggesting that what Murray says should be disregarded because whatever is bourgeois, or brief, is vulgar" (Friedman 1997, 419). Indeed, I go on to say that "we" are all bourgeois, and that Murray is expressing what we are all likely to feel—hardly the way to defame someone. Finally, Palmer disregards the reasons I give for wondering if Murray's view of happiness is a product of bourgeois culture, and may therefore be less self-evidently true than it seems. It is enough for Palmer that I used the word "bourgeois"—meaning that it is *Palmer*, not I, who considers this term an insult. Similarly, Palmer (1998b, 351) accurately reports that I call Murray's view of community "facile," but he does not mention my extended argument justifying this conclusion (Friedman 1997, 420–21)—let alone does he rebut it.

   Second, Palmer (1998b, 350, 351) contends that I was "remarkably uncharitable" in "dismiss[ing]" Milton Friedman for having famously equated capitalism and freedom. Here Palmer does attempt a rebuttal, but it fails. He quotes two sentences from Friedman's *Capitalism and Freedom*, of which the first, calling "freedom in economic arrangements . . . an end in itself," tends to support my claim; and of which the second, dealing with "political freedom," is irrelevant. If one reads the rest of the page from which Palmer pulls these sentences (Friedman 1962, 8), one will find that Friedman is arguing precisely that for most people (as distinguished from "intellectuals," who "tend to express contempt for what they regard as material aspects of life"), "the direct importance of economic freedom is at least comparable in significance to the indirect importance of economic freedom as a means to political freedom," such that the imposition on someone of a 10-percent income tax means the "deprivation" of "a corresponding part of his personal freedom." On the next page, Friedman lists a whole host of economic regulations that, he asserts, deprive people of "personal freedom." Strictly speaking, I should have said that Friedman equates capitalism with *personal* freedom, but this terminology does not affect in the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

least the substance of my objection: that Friedman contradicts his consequentialist approach to defending capitalism by placing intrinsic value on capitalism-cum-("personal") freedom *regardless* of its consequences. Most importantly, Palmer fails to notice that this criticism of the great economist is a minor note in a section of the essay (Friedman 1997, 449ff) that lauds Chicago- and Austrian-school economists for their consequentialism, objecting only to their lapses into nonconsequentialist philosophizing. It is not a "dismissal" of Friedman at all.

Third, Palmer (1998, 352n4) claims that I "misinterpre[t]" David Boaz's defense of individualism, but he never even hints at what this misinterpretation is. Instead he reiterates Boaz's defense of individualism and argues, correctly, that (if sound) it constitutes a rejoinder to communitarianism. But Palmer's repetition of this rejoinder is a non sequitur: I was pointing out that, even if it is sound, there is no reason to think that Boaz's defense of individualism against communitarianism leads to *libertarian* liberalism rather than social-democratic liberalism. To make that leap one would, I pointed out, require—by virtue of Boaz's own argument about individuals' "'needs'"—empirical evidence Boaz never provides that laissez-faire capitalism better serves those needs than social democracy does (Friedman 1997, 437). Moreover, I argued at length (ibid., 437–38), Boaz's defense of individualism "is either inaccurate or trivial" (ibid.), for reasons that Palmer does not attempt to rebut.

2. It is rather strange, having published a 60-page article praising consequentialist social science and condemning the corrosive effects of deontological thought, to be informed that I am a Kantian who equates morality with categorical imperatives. This is the first of a string of unwarranted misreadings of the text to which Palmer is attempting to reply, all of which appear to stem from Palmer's failure to consider the possibility that, in trying to understand even a minimally complicated argument, he might go wrong if he tears each point from its context. In this case, he seems to have focused solely on why I interpreted his allegedly hypothetical libertarianism as categorical. While this narrow question might be seen as credibly answered by Palmer's inference that I am assuming all morality to be categorical in nature, such an inference contradicts the consequentialist thrust of my argument as a whole. Indeed, even my brief condemnation of Palmer's libertarianism is based on what I perceive to be its *failure* to be consequentialist or hypothetical.
3. To recognize how strange Palmer's consequentialist interpretation of modern libertarian philosophy is, one need only consult the responses of Narveson (1992), Tibor Machan (1992), and Antony Flew (1992) to my earlier critique of libertarian deontology (Friedman 1990). Or one could consult the books of libertarian philosophy Palmer recommends in his appendix to *The Libertarian Reader* (Boaz 1997a)—or, indeed, the books by Boaz (1997b) and Charles Murray (1997) discussed at length in the review essay to which Palmer is replying.
4. A mildly attentive reading of "What's Wrong with Libertarianism" (esp. 453–54 and 456) would have alerted Palmer to the fact that there is a problem here, since I claimed the Enlightenment—hence Hume and Smith—as the progeni-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tor of just the kind of postlibertarian thought I would like to see: consequentialist thought. Thus, I could hardly be unaware of the consequentialist tradition in philosophy of which Palmer makes so much; nor could I believe that philosophy must be nonconsequentialist, as he infers; nor could holding up the likes of Hume and Smith as exemplary, as he now does, indicate disagreement with me. What Palmer neglects to tell us is how his apotheoses of consequentialism and the Enlightenment prove that libertarianism is the upshot of these traditions.

5. This may explain why Palmer oscillates between treating his interlocutor as an idiot who requires lectures on elementary logic; an aider and abetter of crimes against humanity, such as Stalinism; and an unintelligible perpetrator of obvious contradictions, blindly unaware of the evident incoherence of his arguments. Had Palmer (1998b, 344) attempted to understand what I wrote, in context, before assuming that everything whose meaning was not immediately evident to him must stem from "logical and factual errors," he might not have ended up producing a laundry list of inaccurate and irrelevant criticisms. But such an attempt at understanding might have opened up the possibility that the incoherence and contradictions lie in libertarianism itself—not because libertarians are stupid, criminal, or *unintelligibly* prone to self-contradiction, but because they have simply made the mistake of failing to clarify in their own minds whether they think laissez-faire capitalism is intrinsically good, regardless of its empirical consequences, because it embodies "freedom" or inviolate property rights; or whether instead they think it is good *because* of its empirical consequences.
6. To avoid misunderstanding, what I am calling intellectual history needs to be distinguished from other modes of attempted *Verstehen*. The intellectual historian does not claim access to the unconscious. Rather, as I see it, the intellectual historian's task is to discern what Popper would call the "problem situation" that (often subconsciously) faces a writer, based on the assumptions to which she has committed herself. The object of intellectual-historical analysis is texts, not people; intellectual history, while sometimes looking like the psychoanalysis of the authors of texts, is actually best conceived of as a structural analysis of the logic of the texts themselves—a logic that, however, originates in the conscious and subconscious (and, perhaps, the unconscious) mind of the author. This does not make the author the best authority about her logical motivations; we would not be satisfied if, in response to our analysis of why an author was driven by her assumptions toward an erroneous conclusion, the author simply denied the accuracy of the analysis without giving a better alternative—any more than we would be satisfied with such a denial in the case of our assessment of the thinking of an acquaintance or a politician we were trying to understand. To deny is not to falsify. But the textual focus of intellectual history does mean that the author of the text is as entitled as anyone else to practice intellectual history upon it by advancing hypotheses about its operative assumptions; indeed, a self-aware author will constantly do this, in the attempt to ensure that her text is not being driven toward bogus conclusions by unexamined or merely convenient premises.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

On the other hand, an author who lacks self-awareness may react to an accurate intellectual history of his thought with a burst of furious (*and empirically unsustainable or logically inconsistent*) denial, such as that evinced in Palmer's Reply. Like a Freudian, the intellectual historian may interpret denial as indirect evidence that her analysis is on the mark. But unlike unfalsifiable forms of Freudian (and Marxist, and public-choice) attempts at *Verstehen*, which *automatically* turn denial into evidence of what is being denied, the intellectual historian is entitled to interpret denial in this way only if the denial is not accompanied by sound empirical or logical reasons for thinking that the analysis in question is erroneous; reasons, in other words, that falsify the analysis.

7. Moreover, Palmer's appendix to Boaz fails ever to mention the potential conflict (or even the existence) of deontological and teleological approaches to libertarianism. This failure encourages the interpretation that Palmer was "bringing together" consequentialist and nonconsequentialist reasoning in the way libertarian thinkers usually do: by overlooking the tension between them. Indeed, the largely uncritical celebration of libertarian thought found in Palmer's appendix heaps encomia on thinkers who bring together the two forms of reasoning in just this illegitimate way. For example, on the page that immediately follows the one containing the "brings together" passage, Palmer (1997, 417) unabashedly recommends a book—Murray Rothbard's *For a New Liberty*—that attributes the convergence between the conclusions of libertarian philosophers and those of libertarian social scientists to a "fortunate" happenstance (Rothbard 1976, 40; cf. Friedman 1997, 434–35). And the same page of Palmer's appendix (1997, 417) characterizes Robert Nozick's *Anarchy, State, and Utopia* as "brilliant," registering no objection to Nozick's failure to consider the empirical consequences of the libertarian rights he defends.
8. Palmer wastes a great deal of effort denying something I never affirmed: that people should be required "to act so as always to attempt to generate the best consequences" (Palmer 1998b, 341). Apparently, when Palmer reads the word *utilitarian* (admittedly a label that is prone to misunderstanding, but so is the only alternative, *eudaimonist*), he feels entitled to conclude that I am speaking of the philosophy of Jeremy Bentham, despite the fact that nothing in my argument is Benthamite, and despite the fact that the rule-oriented thinkers on whom Palmer relies to knock down the Benthamite straw man (Hume and Hayek) are, themselves, with some justification, called "utilitarians." (Later, Palmer [ibid., 351] quarrels with my use of the term *utilitarian* to describe Charles Murray, contending that this "obscures the difference between a consequentialist and a utilitarian," a difference upon which Palmer then delivers a mini-lecture. Palmer is mistaken. A consequentialist can favor any of a number of ultimate ends, among them happiness; a utilitarian, speaking generally, is a consequentialist who takes happiness to be the telos; and Murray repeatedly makes it clear that happiness is his [ostensible] ultimate end, as "What's Wrong with Libertarianism" demonstrates at length.)
9. This is not the only puzzling aspect of Palmer's alleged consequentialism. One would expect a consequentialist libertarian to rejoice at the discovery of a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

whole new line of inquiry into the possible irrationality of government policy, especially one that is (unlike spontaneous-order and public-choice theory) buttressed by a vast, rock-solid empirical literature. Just such a line of inquiry, embodied in the political-science research on public ignorance, is described at the end of "What's Wrong with Libertarianism"—but Palmer is completely silent about it. Perhaps, for some reason, he does not find this literature convincing, even though the scholars who have produced it (nonlibertarians all) have replicated its findings repeatedly (to their great discomfort; see Hoffman 1998). But, convinced or not, one would expect a consequentialist libertarian to be at least interested in it. So we are entitled to ask why Palmer ignores it. One possibility is that, unlike the arguments from spontaneous order and from public-choice theory (if they were sound), the public-ignorance literature cannot be thought to produce an *airtight* case for libertarianism. For example, as I pointed out (Friedman 1997, 456), the ubiquity of public ignorance leaves open at least the logical possibility of expert, and thus well-informed, government intervention. Where the postlibertarian consequentialist might find this literature compelling because it uses insights that (for reasons I describe in Part IV of "What's Wrong with Libertarianism") ring true to the experience of libertarians, she might also be attracted by its use of them in ways that stimulate the investigation of political reality, *regardless* of where the investigation may lead.

10. An instance of both logical leaping and propagandizing: Palmer's use of an innocent observation on my part—that libertarianism is both mainstream in its unreflective acceptance of the legitimacy of private property, and marginalized in its insistence that this legitimacy trumps all other considerations—as an occasion to wax indignant about the "libertarians" (sic) who "were murdered by communist, monarchist, fascist, national socialist, and other collectivist states" (1998b, 347). Another instance: Palmer's claim (1998b, 345) that G. A. Cohen defends "the communism . . . which rests on the constant exercise of terror against a subject population." This is slanderous: far from defending the exercise of terror under real, existing Communism, Cohen (like most Western Marxists) saw it as a perversion of the type of socialism he favored—as Palmer's own quotations from Cohen (ibid., 354n9) unequivocally demonstrate.

11. Instead of making any argument at all against my reasons for questioning the intrinsic value of freedom, Palmer (1998b, 347), in one of many attempts to wield erudition as a bludgeon, criticizes me for failing to cite the literature on "the right to do wrong," and he proceeds to quote from this literature ad nauseam, demonstrating nothing substantive, but managing to show that many other liberals have shared his viewpoint (one wonders whether his oft-cited logic textbook has no chapter on the illegitimacy of arguments from authority). It is poignant, however, that Palmer neglects what is, to my knowledge, the only contributions to this literature that are directly relevant: Jeremy Waldron's article on the subject, and the debate it sparked (Waldron 1981; Galston 1983; Waldron 1983). Waldron's article, unlike the sources Palmer quotes, attempts to grapple with the seeming incoherence of a "right to do wrong" rather than simply affirming that there is such a right. And, having directed our attention

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to this apparent incoherence, Waldron has little choice but to take as a given exactly what Palmer finds so ridiculous: that the right to do wrong is, indeed, prima facie contradictory. Waldron's task is then to explain how it is that liberalism seems to produce this contradiction, not to dispute that it is contradictory.

12. I "plump" for no brand of freedom, because for me, nothing rides on how we define the term. All that matters to me is which form of freedom, or unfreedom, produces the best consequences. The dispute over the "correct definition" of freedom lies entirely in the realm of deontology. My only role here is to point out the internal contradictions in *libertarians'* definition of freedom.
13. Nor will it do to define "coercion" as "the use of force," since then the question is what constitutes "force." Firing a gun at the side of "my" barn presumably does not, but firing it at the side of "your" head presumably does. But then what constitutes force collapses into whatever system of property defines this barn as mine and that head as yours. This is why there can be no difference between the amount of negative freedom protected by different systems of property, as I argue in the text below: negative freedom is nothing more than freedom from coercion, i.e., freedom from force, i.e., freedom from violations of the system of property in a given society.
14. Palmer (1998b, 352n3) uses these adjectives to characterize my opposition to nonconsequentialist libertarianism, for, as he contends, "what counts as a good or a bad consequence cannot by itself be determined by invoking consequentialism; there must be some deeper reflection . . . about what consequences we should seek to achieve or avoid." This is quite right, but I made the same point not once, but twice: see Friedman 1997, 431 and 460n2. In these passages I made it quite clear that consequentialist social science requires nonconsequentialist philosophy to tell it what type of consequences count as good ones. Opposing nonconsequentialist *libertarianism* is not the same as opposing nonconsequentialist *philosophy*. The former is defective not because there is anything wrong, per se, with a priori philosophy, but because a priori philosophy cannot establish libertarian conclusions, as Part III of the present Rejoinder contends. Libertarian conclusions, if they are to be established, require a posteriori evidence that libertarianism would achieve ends that are established a priori as good.
15. In order to endorse Kevin Quinn and Tina R. Green's (1998) critique of libertarian "hermeneutics," one need not accept their communitarian (and thus authentically postmodern-hermeneutic) alternative to it. To do so would mean substituting an incorrigible, omniscient discursive community for the incorrigible, omniscient individual to which they rightly object. Both communitarianism and deontological liberalism—including libertarian versions of liberalism—relativize the good, differing only on whether the good is whatever the individual or whatever the community says it is; both communitarians and deontological liberals thereby accept the view that there is some authority (whether the community or the individual) whose decisions are normative. (It is my criticism of the metaethics of normative authority in Friedman 1997, 427 that prompts Palmer's defense of the "right to do wrong."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Friedman 1999 is a systematic critique of this metaethics, in both its communitarian and liberal forms.)

## REFERENCES

Berlin, Isaiah. 1969. *Four Essays on Liberty.* New York: Oxford Univeristy Press.

Boaz, David. 1997a. *Libertarianism: A Primer.* New York: Free Press.

Boaz, David. 1997b. *The Libertarian Reader: Classic and Contemporary Writings from Lao-Tzu to Milton Friedman.* New York: Free Press.

Conway, David. 1995. *Classical Liberalism: The Unvanquished Ideal.* New York: St. Martin's Press.

Epstein, Richard A. 1998. "The Right Set of Simple Rules: A Short Reply to Schauer and Comment on Cohen." *Critical Review* 12(3): 305–18.

Feallsanach, Am. 1998. "Locke and Libertarian Property Rights: Reply to Weinberg." *Critical Review* 12(3): 319–23.

Feser, Edward. 1998. "Hayek, Social Justice, and the Market: Reply to Johnston." *Critical Review* 12(3): 269–82.

Flew, Antony. 1992. "Dissent from 'The New Consensus': Reply to Friedman." *Critical Review* 6(1): 83–96.

Friedman, Jeffrey. 1990. "The New Consensus: II. The Democratic Welfare State." *Critical Review* 4(4): 633–708.

Friedman, Jeffrey. 1997. "What's Wrong with Libertarianism." *Critical Review* 11(3): 407–67.

Friedman, Jeffrey. 1999. *Beyond Voluntarism: A Critique of the Similarities between Liberal and Communitarian Thought.* Ph.D. dissertation, Department of Political Science, Yale University.

Friedman, Milton. 1962. *Capitalism and Freedom.* Chicago: University of Chicago Press.

Galston, William A. 1983. "On the Alleged Right to Do Wrong: A Response to Waldron." *Ethics* 93: 320–24.

Hayek, F. A. 1948. "The Facts of the Social Sciences." In idem, *Individualism and Economic Order.* Chicago: University of Chicago Press.

Hoffman, Tom. 1998. "Rationality Reconceived: The Mass Electorate and Democratic Theory." *Critical Review* 12(4): forthcoming.

Lomasky, Loren. 1987. *Persons, Rights, and the Moral Community.* New York: Oxford University Press.

MacGregor, David. "It Ayn't Rand." *Critical Review* 11(3): 373–92.

Machan, Tibor. 1992. "The Right to Private Property: Reply to Friedman." *Critical Review* 6(1): 97–106.

Murray, Charles. 1997. *What It Means to Be a Libertarian.* New York: Broadway Books.

Narveson, Jan. 1988. *The Libertarian Idea.* Philadelphia: Temple University Press.

Narveson, Jan. 1992. "Libertarianism, Postlibertarianism, and the Welfare State: Reply to Friedman." *Critical Review* 6(1): 45–82.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Nozick, Robert. 1971. *Anarchy, State, and Utopia.* New York: Basic Books.
Palmer, Tom G. 1997. "The Literature of Liberty." Appendix to Boaz 1997b.
Palmer, Tom G. 1998a. "G. A. Cohen on Self-Ownership, Property, and Equality." *Critical Review* 12(3): 225–52.
Palmer, Tom G. 1998b. "What's *Not* Wrong with Libertarianism: Reply to Friedman." *Critical Review* 12(3): 337–58.
Quinn, Kevin, and Tina R. Green. 1998. "Hermeneutics and Libertarianism: An Odd Couple." *Critical Review* 12(3): 207–24.
Rothbard, Murray N. 1978. *For a New Liberty: The Libertarian Manifesto*, rev. ed. New York: Macmillan.
Samuels, Warren. 1993. "The Growth of Government." *Critical Review* 7(4): 445–60.
Sciabarra, Chris Matthew. 1998. "Are We All Dialecticians Now? Reply to MacGregor and Friedman." *Critical Review* 12(3): 283–98.
Waldron, Jeremy. 1981. "A Right to Do Wrong." *Ethics* 92: 21–39.
Waldron, Jeremy. 1983. "Galston on Rights." *Ethics* 93: 325–27.
Weber, Max. 1978. *Economy and Society*, vol. 1, ed. Guenther Roth and Claus Wittich. Berkeley: University of California Press.
Williams, Juliet. 1997. "On the Road Again: Hayek and the Rule of Law." *Critical Review* 11(1): 101–120.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Now available electronically for institutions

# European Journal of Social Theory

Edited by **Gerard Delanty** *University of Liverpool*

*'The **European Journal of Social Theory** promises to be an exciting and important venue for the world community of theorists and social analysts to address social processes that are shaping communities, nations and states across the globe.'*
- **Steven Seidman**

*Volume 1 is still available. Contact the Journals Marketing Department for further information.*

**Published quarterly**
**ISSN: 1368-4310**

**Highlights from Recent Issues Include:**

- Trust, Distrust and Two Paradoxes of Democracy **Piotr Sztompka**
- The Narcissism of Minor Differences **Anton Blok**
- The International Character of Modern Citizenship **Barry Hindess**
- Citizenship and Difference **Ruth Lister**
- Outline of a Theory of Generations **Ron Eyerman and Bryan S Turner**
- Divining the Future of Social Theory **Steve Fuller**
- The Myth of Modernist Method **William Outhwaite**
- The Autonomy of the Self: The Meadian Heritage and its Postmodern Challenge **Hans Joas**
- Nationalism: A Literature Survey **Damian Tambini**

**Order Form for New Subscribers** - Subscribe at the Introductory Rate

**SAGE Publications**, 6 Bonhill Street, London EC2A 4PU, UK
Subscription Hotline +44 (0)171 330 1266 / Email: subscription@sagepub.co.uk

USA orders to be sent to:
**PO Box 5096, Thousand Oaks, CA 91359**

Name _____

Address _____

_____

_____ 8J01

❑ Yes! I want to subscribe to the ***European Journal of Social Theory*** starting with Volume 2 (1999)

❑ **Introductory Rate for Individuals** £30/$48

❑ **Institutional Rate** £140/US$224

**Methods of Payment**

❑ I enclose a cheque (made payable to **SAGE Publications Ltd**) for: ☐

Please invoice my credit card
❑ Mastercard ❑ Visa Amount: ☐

Card No: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiry Date: ☐/☐

Signature: _____ Date: / /

**SAGE Publications Online:** http://www.sagepub.co.uk

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Current Sociology

Now available electronically for institutions

**An Official Journal of the International Sociological Association**

Edited by **Susan McDaniel**
*University of Alberta, Canada*

An official journal of the ISA since 1952, ***Current Sociology*** is one of the oldest and most widely cited sociology journals in the world, publishing long 'Trend Reports' in all areas of sociology -- theories, methods, concepts, substantive research and national/ regional developments.

These Trend Reports have covered topics of growing importance within the discipline, such as the sociology of law, economic sociology, sociology of popular culture, sociology of time, and youth and society. The aim has been to analyze ongoing controversies and new tendencies, sketch desirable lines of future work, and provide extensive bibliographies.

In September 1997, when Susan McDaniel took over as Editor, ***Current Sociology*** began its relaunch as a peer-reviewed quarterly.

Now, in addition to the trend reports, the journal is soliciting shorter articles reviewing emergent and challenging issues: substantive, conceptual, theoretical and methodological. Its interest will be specifically in developments and controversies in fields and areas of sociological inquiry.

**Published quarterly**
**ISSN: 0011-3921**

**Order Form for New Subscribers** - Subscribe at the Introductory Rate

**SAGE Publications**, 6 Bonhill Street, London EC2A 4PU, UK
Subscription Hotline +44 (0)171 330 1266 / Email: subscription@sagepub.co.uk

USA orders to be sent to:
**PO Box 5096, Thousand Oaks, CA 91359**

Name _____

Address _____

_____

_____ 8J01

❑ Yes! I want to subscribe to ***Current Sociology*** starting with Volume 47 (1999)

❑ **Introductory Rate for Individuals** £35/$56 (Usual Rate £44/$70)

❑ **Institutional Rate** £174/$278

**Methods of Payment**

❑ I enclose a cheque (made payable to **SAGE Publications Ltd**) for: ☐

Please invoice my credit card
❑ Mastercard ❑ Visa Amount: ☐

Card No: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiry Date: ☐☐/☐☐

Signature: _____ Date: / /

**SAGE Publications Online:** http://www.sagepub.co.uk

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Journals from SAGE

# THESIS ELEVEN

Coordinating Editors
**Johann P Arnason, Peter Beilharz and Trevor Hogan** *La Trobe University, Australia*

*'**Thesis Eleven** has managed to establish itself as a major global forum for post-Marxist, post-modernist, post-feminist discourse.'* ***Martin Jay***

*Thesis Eleven* was launched sixteen years ago to encourage the development of social theory in the broadest sense. The journal is international and interdisciplinary with a central focus on theories of society, culture, and politics and the understanding of modernity.

*Thesis Eleven* publishes theories and theorists, surveys, critiques, debates and interpretations. The journal also brings together articles on place, region, or problems in the world today, encouraging civilizational analysis and work on alternative modernities from fascism and communism to Japan and Southeast Asia.

Since it was established the journal has published the work of some of the world's leading theorists including:

■ Niklas Luhmann ■ Alain Touraine
■ Immanuel Wallerstein ■ Martin Jay
■ Richard Rorty ■ Michel Wieviorka

**Published quarterly ■ ISSN: 0725 5136**

***Order Form for New Subscribers - Subscribe at the Introductory Rate***

**SAGE Publications Ltd, 6 Bonhill Street, London EC2A 4PU, UK**
**Call our Subscription Hotline on +44 (0)171 330 1266**

USA orders to be sent to:
**PO Box 5096, Thousand Oaks, CA 91359**

Name _____

Address _____

_____ 7J16

❑ Yes! I want to subscribe to ***Thesis Eleven*** starting with the next available issue

❑ **Introductory Rate for Individuals** £28 /US$39 (Usual Rate £35/US$49)

❑ **Institutional Rate** £95 /US$152

❑ Please send me a brochure on the journal

*Methods of Payment*

❑ I enclose a cheque (made payable to **SAGE Publications Ltd**) for: ☐

Please invoice my credit card
❑ Mastercard ❑ Visa Amount: ☐

Card No: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiry Date: ☐/☐

Signature: _____ Date: / /

LICENSED TO GNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Theory Culture & Society

**Explorations in Critical Social Science**

Now available electronically for institutions

Edited by **Mike Featherstone**
*Nottingham Trent University, UK*

*'**Theory, Culture & Society** is a meeting point for the most intriguing, bold and insightful theoretical developments in contemporary culture, and in this role it has but few equals.'*
**- Zygmunt Bauman**

*Volumes 1-15 are still available. For further details contact the Journals Marketing Department at the address below.*

**Published bimonthly from 1999**
**ISSN: 0263-2764**

**Highlights from Recent Issues Include:**

- **Jean Baudrillard** on the end of the millennium or the countdown
- **John Fiske** on whiteness, the black man and democratic totalitarianism
- **Loïc Wacquant** on the social art of the hustler in the American ghetto
- **Zygmunt Bauman** on the postmodern uses of sex
- **Jeffrey Weeks** on the sexual citizen
- **Elizabeth Wilson** on bohemian love
- **Cindy Patton** on locating affect in nationalism after AIDS
- **Elizabeth Beck-Gernsheim** on the post-familial family- from a community of need to elective affinities
- **Georg Simmel** on the sociology of the family
- **Philippe Bourgois** on just another night in a shooting gallery

**Order Form for New Subscribers** - Subscribe at the Introductory Rate

**SAGE Publications**, 6 Bonhill Street, London EC2A 4PU, UK
Subscription Hotline +44 (0)171 330 1266 / Email: subscription@sagepub.co.uk

USA orders to be sent to:
**PO Box 5096, Thousand Oaks, CA 91359**

Name _____

Address _____

_____

_____ 8J01

❑ Yes! I want to subscribe to ***Theory, Culture & Society*** starting with Volume 16 (1999)
❑ **Introductory Rate for Individuals** £36/$57 (Usual Rate £45/$72)
❑ **Institutional Rate** £240/$384

**Methods of Payment**

❑ I enclose a cheque (made payable to **SAGE Publications Ltd**) for: ☐

Please invoice my credit card
❑ Mastercard ❑ Visa Amount: ☐

Card No: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiry Date: ☐/☐

Signature: _____ Date: / /

**SAGE Publications Online:** http://www.sagepub.co.uk


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

BLACKWELL Journals

# The Philosophical Quarterly

**Edited by Roger Squires, Stephen Read, David Archard, John Heil**

*The Philosophical Quarterly* is an international journal of general philosophy which publishes high quality articles and discussions, lively and comprehensive reviews, prize essays and special issues. By representing exciting developments in the subject - for example, in reflecting on cognitive psychology, the visual arts and quantum physics - the journal appeals to a wide readership, including students.

***Recent and forthcoming highlights:***

- Are Dispositions Reducible? *George Molnar*
- Bipartism & Phenomenology of Content, *Greg McCulloch*
- The concept of emergence: non-deducibility or downwards causation, *Jürgen Schröder*
- How superduper does a Physicalist Supervenience need to be? *Jessica Wilson*
- The Search for Ontological Emergence: A critical taxonomy, *Michael Silberstein & John Mcgeever*
- Actually Knowing, *Stephen Hetherington*
- Anti-individualism and Fregeanism, *Scott Kimbrough*
- Meaning and Truth Conditions, *Gary Kemp*
- Physicalism, Teleology & Miraculous Coincidence Problem, *Jonathan Knowles*
- Intentionality and the Physical, *Stephen Mumford*

---

**The Philosophical Quarterly** ISSN 0031-8094 Published in January, April, July, October
Subscription Rates, Vol. 49/1999:
Institutions: Europe £78, N. America $175, Rest of World £106.
Personal: Europe £24, N. America $54, Rest of World £33.
Students: Europe/Rest of World £18, N. America $27

To subscribe to *Philosophical Quarterly* please use the order form on the Blackwell website: http://www.blackwellpublishers.co.uk, send an email to jnlinfo@blackwellpublishers.co.uk, or contact either of the following:

- Blackwell Publishers Journals, PO Box 805, 108 Cowley Road, Oxford OX4 1FH, UK. Tel: +44 (0)1865 244083, fax +44 (0)1865 381381
- Journals Marketing (PHIQ), Blackwell Publishers, 350 Main Street, Malden, MA 02148, USA. Tel. +1 (781) 388 8200, fax +1 (781) 388 8210

**SPECIAL OFFER for 1999**

BLACKWELL Publishers

**Electronic access included in the subscription price to the print edition**

*For more information visit our website*

http://www.blackwellpublishers.co.uk

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Sociological Research Online

## Visit our website today:
## *http://www.socresonline.org.uk/socresonline*

Edited by **Liz Stanley** *University of Manchester*

## A New Electronic Journal

*Sociological Research Online* is a new international journal which promotes rapid communication among sociologists and is available free of charge on the internet. The first issue was published in March 1996.

The journal publishes fully refereed and high quality applied sociology, focusing on theoretical, empirical and methodological discussions which engage with current political, cultural and intellectual topics and debates.

## Call for Papers

*Sociological Research Online* welcomes papers across the entire range of sociological concerns and interests.

If you would like to be kept informed about *Sociological Research Online* or are interested in submitting a manuscript:

- visit our website <*http://www.socresonline.org.uk/socresonline*>
- contact Stuart Peters, Department of Sociology, University of Surrey, Guildford GU2 5XH, <*socres@soc.surrey.ac.uk*>

*Sociological Research Online* is supported by the Joint Information Systems Committee's Electronic Libraries Programme. It is managed by a consortium of the Universities of Surrey and Stirling, the British Sociological Association and SAGE Publications.


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# Journal of European Psychoanalysis

*Humanities, Psychoanalysis, Psychotherapies*

No.1, Spring-Summer 1995


Special Issue on:

## Narcissisms

***Kernberg***: *Narcissistic Personality Disorders*
*A Discussion with Kernberg*
***Lothane***: *The Myth of Narcissism*
***Matte Blanco***: *Creativity and Orthodoxy*
***Bria & De Risio***: *On Matte Blanco*
***Agamben***: *Narcissus and Pygmalion*
*Two Interviews with Isabelle Stengers*
***Dolto & Nasio***: *The Mirror's Child*
***Benvenuto***: *Freud's Concept of "Narcissism"*

Reviews:

***Tarozzi-Goldsmith***: Boothby, *Death and Desire*
***Papp***: Lothane, *In Defense of Schreber*
***Johansson***: Roudinesco, *Jacques Lacan*
***Benvenuto***: Bouveresse, *Wittgenstein Lecteur de Freud*
***Mosconi & Tambureno***: Carotenuto, *Kant's Dove*
***Marone***: *Lacan avec les Philosophes*


Subscription Rates:
Individuals: One-year (2 issues) $ 20.00 Two-year (4 issues) $ 40.00
Institutional: One-year (2 issues) $ 48.00 Two-year (4 issues) $ 90.00
(Foreign Subscriptions, including Canadian, add 15%. US currency only)
Published twice a year. Address all subscriptions correspondence to:
**Telos Press Ltd., 431 East 12th St., New York, NY 10009.**
**Tel.: 212-228-6479 Fax: 212-228-6379**



LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# JOURNAL OF DEMOCRACY

## NOW CELEBRATING ITS TENTH ANNIVERSARY

EDITORS
Marc F. Plattner
Larry Diamond

EDITORIAL BOARD
Chinua Achebe
Shaul Bakhash
Nancy Bermeo
Daniel Brumberg
Naomi Chazan
Charles H. Fairbanks, Jr.
Francis Fukuyama
Harry Harding
Donald L. Horowitz
Samuel P. Huntington
Atul Kohli
Leszek Kolakowski
Liang Heng
Arend Lijphart
Juan J. Linz
Seymour Martin Lipset
Joshua Muravchik
Ergun Özbudun
Octavio Paz
Susan Kaufman Purcell
Peter Reddaway
Condoleezza Rice
Philippe Schmitter
Alfred Stepan
Vladimir Tismaneanu
Arturo Valenzuela
Ernest J. Wilson III

SINCE ITS INCEPTION IN 1990, the *Journal of Democracy* has become an influential international forum for scholarly analysis and competing democratic viewpoints. Its articles have been cited in *The New York Times* and *The Wall Street Journal* and widely reprinted in many languages. Focusing exclusively on democracy, the *Journal* monitors and analyzes democratic regimes and movements in scores of countries around the world. Each issue features a unique blend of scholarly analysis, reports from democratic activists, updates on news and elections, and reviews of important recent books. The Fifth Anniversary Issue (Volume 6, Number 1) featured Robert Putnam's "Bowling Alone," an essay on the decline of America's civil participation that has been widely cited in the national press by George Will, David Broder, and others.

*Published quarterly in January, April, July, and October for the National Endowment for Democracy.*

*Prepayment is required.* **Annual Subscriptions:** $30.00, individuals; $76.00, institutions. **Foreign postage:** $4.30, Canada & Mexico; $9.10, outside North America. **Single-issue prices:** $8.00, individuals; $20.00, institutions. Payment must be drawn on a U.S. bank in U.S. dollars or made by international money order. MD residents add 5% sales tax. For orders shipped to Canada add 7% GST (#12400-4946RT).

**Send orders to:** The Johns Hopkins University Press, P.O. Box 19966, Baltimore, MD 21211-0966, U.S.A. To place an order using Visa or MasterCard, **call toll-free 1-800-548-1784,** FAX us at **(410) 516-6968,** or send Visa/MasterCard orders to this email address: **jlorder@jhupress.jhu.edu**

http://www.press.jhu.edu/press/journals/

EX9


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

# BACK ISSUES

Only the most recent back issues are listed here. For complete back issue list, visit our website at www.sevenbridgespress.com. Payment for back issues should be made by Visa or MasterCard (include account number and expiration date) or check or money order in U.S. dollars drawn on a U.S. bank. Student orders must be from student subscribers, or must be accompanied by copy of valid student ID.

**Send back issue orders to:** Business Office, CRITICAL REVIEW, P.O. Box 10, Dept. 136, Newtown, CT 06470. Phone (203) 270–8103, fax (203) 270–8105, e-mail info@criticalreview.com.

**vol. 8, no. 3, Summer 1994** — *$15 libraries, $10 individuals, $5 students. T. L. Anderson, D. R. Leal, M. Sagoff, J. S. Shaw, J. Friedman* on free-market environmentalism; *R. Ashcraft, T. A. Horne* on Locke; *R. Bellamy* on Austrian economic morality; *L. Calhoun* on art and psychiatry; *D. A. Dombrowski* on Stephen R. L. Clark; *D. Felix, R. W. Garrison, G. Hill* on Keynes; *C. A. E. Goodhart* on free banking; *W. Shibles* on the good as the beautiful.

**vol. 8, no. 4, Fall 1994** — *$15 libraries, $10 individuals, $5 students. C. Campbell, R.E. Lane* on consumerism; *J. Friedman* on the evolution of *Critical Review*; *G. Hodgson, S. Horwitz, C.P. Kindleberger, G. Selgin* on state control of money; *P. Rutland* on the USSR; *C.R. Sunstein* on regulation; *J.Q. Wilson* on wealth and happiness.

**vol. 9, nos. 1–2, Winter–Spring 1995 (rational choice theory)** — *$30 libraries, $20 individuals, $10 students. R. P. Abelson, D. Chong, D. Diermeier, J. Ferejohn & D. Satz, M. P. Fiorina, J. Friedman, D. P. Green & I. Shapiro, S. Kelley, R. E. Lane, S. Lohmann, J. B. Murphy, P. C. Ordeshook, N. Schofield, K. A. Shepsle, M. Taylor* on rational choice theory in political science.

**vol. 9, no. 3, Summer 1995** — *$15 libraries, $10 individuals, $5 students. P. Abell* on worker self-management and postmodernism, *R. Beiner* on Foucault, *H.N. Goldstein* on junk bonds in the 1980s, *R. Higgs* vs. *W.J. Samuels* on coercion in society, *R.E. Lane* on researching happiness, *R. Legutko* vs. *P. Simpson* on community and libertarianism, *E. Neaman* on fascism, *M. Prisching* on Schumpeter, *P. Singer* on James Q. Wilson.

**vol. 9, no. 4, Fall 1995** — *$15 libraries, $10 individuals, $5 students. Z. Bauman* on communitarianism and nationalism; *R. Beiner* on Charles Taylor; *F. Carstensen* on economic interventionism; *R. B. Edgerton* and *A. R. Maryanski* on human nature and the good society; *L. Greenfeld* on Marx, List, and Smith; *D. Kuspit* on culture and capitalism.

**vol. 10, no. 1, Winter 1996** — *$15 libraries, $10 individuals, $5 students. T. Bender* on community and state, *J. Borchert* on welfare-state retrenchment, *F. Eidlin* on Popper's philosophy and politics, *J. Friedman* on public opinion and democracy, *C. L. Griswold, Jr.* on happiness, *G. Hill* on Keynesian economics and ethics, *E. R. A. N. Smith* on public opinion in America, *R. Weissberg* on the marketplace of ideas.

**vol. 10, no. 2, Spring 1996 (nationalism)** — *$15 libraries, $10 individuals, $5 students. J. Friedman* on communitarian nationalism, *L. Greenfeld* on nationalism as the modern religion, *J. T. Levy* on the multiculturalism of fear, *D. Tambini* on Ernest Gellner, *C. Tilly* on the state and nationalism, *M. Tyrrell* on the social psychology of nationalism, *E. Weber* on Eric Hobsbawm, *N. Xenos* and *B. Yack* on the myth of civic nationalism.

**vol. 10, no. 3, Summer 1996** — *$15 libraries, $10 individuals, $5 students. W. Breckman & L. Tragardh* vs. *L. Greenfeld* on nationalism, individualism, and capitalism, *G. Hill* vs. *S. Horwitz* on Keynes and capitalism, *D. Schweickart* on David Ramsay Steele on socialism, *D. R. Steele* on market socialism.

**vol. 10, no. 4, Fall 1996 (*The Joyless Economy*)** — *$15 libraries, $10 individuals, $5 students. M. Benedikt, J. Friedman and A. McCabe, R. Inglehart, A. O. Hirschman, J. Schor, T. Scitovsky, A. Sen* on Scitovsky's *The Joyless Economy* after 20 years.

**vol. 11, no. 1, Winter 1997 (*F. A. Hayek*)** — *$15 libraries, $10 individuals, $5 students. P. J. Boettke,* Where Economics Went Wrong; *G. diZerega* on spontaneous order; *J. Friedman* on Hayek as ideologue; *D. Johnston, S. Lukes* on Hayek and social justice; *R. Legutko* on Hayek's instrumentalism; *J. Williams* on the rule of law.

**vol. 11, no. 2, Spring 1997**—*$15 libraries, $10 individuals, $5 students. B. Horvat* vs. *P. Abell* on Yugoslavian socialism, *N. Kogan* on evolutionary aesthetics, *D. Kuspit* on modern art, *A. R. Maryanski* on human groups and speech, *K. F. Otterbein* on the origins of war, *D. L. Prychitko* and *P. Abell* on worker self-management, *F. Turner* defends bourgeois culture, *J. H. Turner* on the evolution of emotions, *A. de Waal* on ethnic conflict and rational choice theory, *D. Wrong* on cultural relativism.

**vol. 11, no. 3, Summer 1997 (libertarianism)**—*$15 libraries, $10 individuals, $5 students. J. Weinberg* on freedom and self-ownership, *J. Wolff* on freedom and liberty, *R. Kraut* on Aristotelian libertarianism, *D. MacGregor* on Ayn Rand, *F. Schauer* on Richard Epstein, *J. Friedman* on what's wrong with libertarianism.

**vol. 11, no. 4, Fall 1997 (pluralism)**—*$15 libraries, $10 individuals, $5 students. R. Boyd* on Frank Knight's pluralism; *E. Feser vs. D. Johnston* on Hayek and social justice; *J. Friedman* on pluralism and relativism; *M. A. Gillespie* on Nietzsche; *G. Hill* on Wittgenstein vs. Rorty; *P. B. Mehta* on John Gray's pluralism; *D. Weinstock* on Isaiah Berlin's pluralism.

**vol. 12, nos. 1–2 (Winter-Spring 1998)**—*$30 libraries, $20 individuals, $10 students. L. Lewin* on public choice theory, *A. Woodlief* on urban policy, *A. V. Llosa* on capitalism in Latin America, *L. Gallaway and R. Vedder* on American labor, *J. B. De Long* on American unemployment, *W. J. Samuels* on Murray Rothbard, *W. Troesken* on postwar economic stability, *S. Horwitz vs. G. Hill* on Keynesianism, *D. M. Hausman, R. Heilbroner, T. Mayer, P. J. Boettke* on contemporary economics, *M. Viroli, N. Xenos, and B. Yack* on civic republicanism.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Forthcoming in

Critical*Review*

public ignorance and:

- the size of the state
- democratic theory
- the mass media
- elite leadership
- deliberative democracy
- private preferences
- Congressional approval

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED